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Thurgood Marshall's Speeches on Equality and Justice Under the Law, 1965-1967.

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THURGOOD MARSHALL'S SPEECHES ON EQUALITY AND JUSTICE UNDER THE LAW 1965-1967

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TABLE OF CONTENTS

ABSTRACT

This study describes, analyzes, and evaluates the speaking of Thurgood Marshall as Solicitor General of the United States from 1965-1967, before general audiences and audiences consisting of lawyers and law students. This period represents an important period in the speaker's life when his services as a speaker outside the courtroom exceeded earlier years. Further, these were times of crises in this nation.

The study includes chapters on Marshall's background and other influences, development of the Negro's struggle for equality and justice, analysis of general audiences and audiences of lawyers and law students, occasions, and analyses of speeches about equality and justice under law for all Americans. Concentrating upon five representative speeches, an appraisal is made of the overall effectiveness of the man and his speaking.

The study suggests that as a man whose work symbolized and spearheaded the struggle of millions of Americans, especially blacks, for equality and justice under law for more than a quarter of a century, Marshall was eminently qualified to speak on the subjects and to the audiences he addressed. The application of rhetorical

principles was evident in each speech. Evaluation of the speaker's logical appeals from a rhetorical point of view indicates that effective arguments and sound reasoning contributed significantly to his overall effectiveness. Marshall's oratory essentially focused on themes dealing with equal rights and justice and may be characterized generally as rhetoric advocating reform. Like other great orators, Marshall came forward to address recurring crises in American society and asserted humanitarian and equalitarian principles to motivate others to ensure constitutional guarantees for all Americans.

CHAPTER I

INTRODUCTION TO THE STUDY

The Honorable Thurgood Marshall served as United States Solicitor General from 1965-1967. He brought to the office of U. S. Solicitor General more than twenty years of experience as legal defense counsel of the National Asscciation for the Advancement of Colored People (NAACP) and four years on the United States Court of Appeals for the Second Circuit. As lawyer for the NAACP, he earned the title "Mr. Civil Rights."[1] In 1967 he was appointed the first black Associate Justice, United States Supreme Court.

Further, Marshall received nationwide recognition for his legal victories before the United States Supreme Court, which included the banning of white primaries in the South, the exclusion of restrictive housing covenants, the outlawing of Jim Crow restrictions in interstate travel and the historic Brown v. Topeka Board of Education (1954) case. He argued thirty-two civil rights cases before the Supreme Court and won twenty-nine, culminating his career as NAACP Defense Counsel with the 1954 decision on segregation in education.

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[1]Arna Bontemps, 100 years of Negro Freedom (New Dodd, Mead and Company, 1961), p. 249.

Marshall commands respect as a man with incisive knowledge of constitutional law and the ability to transform constitutional law into realities. After taking his oath as the thirty-third Solicitor General of the United States, he remarked: "Let me take this opportunity to reaffirm my deep faith in this nation and to pledge that I shall ever be mindful of my obligation to the Constitution and to the goal of equal justice under the law."[2]

Purpose

Essentially, scholars have written about Marshall's legal career and his speechmaking in the courtroom. It appears that his public address outside of the courtroom has been largely ignored. Hence this writer seeks to explore an important facet of his speechmaking on occasions other than those before the court. Further, this study purports to examine and to investigate from a rhetorical point of view the principal line of thought or theme--equality and justice under the law for all--utilized by Marshall in five selected speeches delivered while he held the position of Solicitor General of the United States. In this connection, Thonssen, Baird, and Braden explain: "Instead of attempting to evaluate an entire speaking career covering a lifetime and hundreds of appearances, the critic may limit his

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[2]"The Supreme Court: The First Negro Justice," Time, September 8, 1967, p. 16.

investigation of a man's oratory to a period, phase, a line of thought or even a single characteristic such as invention, persuasive appeals, or language patterns."[3]

The study is undertaken for the purpose of achieving a better understanding of Marshall's public address during the period from 1965-1967. This period was selected because it represents an important era when numerous crucial issues related to civil rights were prevalent. During this period Marshall was frequently invited to address law and professional audiences about current problems and concerns related to inequalities and injustices to minorities in America. Finally, these years immediately preceded his appointment to the Supreme Court of the United States.

Significance of the Problem

This study centers upon addresses that dealt with ideas which "make a difference in the run of human affairs."[4] The principal significance of this study rests in the fact that the critic attempts to forge beyond the superficial aspects of rhetoric and to probe the basic ideas the speaker used repeatedly to foster his line of argument.

Another important factor which contributes to the significance of the problem focuses on speeches dealing with

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[3]Lester Thonssen, A. Craig Baird, and Waldo W. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), p. 312.

[4]Thonssen, Baird, and Braden, p. 398.

elements which are characteristic of great public address. Thonssen, Baird and Braden note that demonstrative oratory deals "with noble themes, universal doctrines, and expressions of man's higher aspirations."[5] These authors also note that "grand themes derive from momentous events, actual or impending; [and] great speeches translate those themes into catalogs of proposed action."[6] The writer seeks to examine these elements of rhetoric "for their contribution to the persuasive efficacy of whole."[7]

Rhetoricians recommend an approach to speeches of great men "as indicating the great subjects and occasions of our political history and the spirit and motives of the great leaders of that history."[8] Concerning the twentieth century, it has been asserted that "great leaders are men of eloquent speech and an understanding of their lives and speeches is essential to a true conception of our political growth and sentiments."[9] Marie H. Nichols remarks, "Great speeches reveal man at the intellectual crossroads of his public life. They are responses to situations that man has

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[5]Thonssen, Baird, and Braden, p. 398.

[6]Thonssen, Baird, and Braden, p. 392.

[7]Marie Kathryn Hochmuth, ed., A History and Criticism of American Public Address, Volume III (New York: Russell and Russell, 1955), p. 21.

[8]Marie Hochmuth Nichols, Rhetoric and Criticism (Baton Rouge: Louisiana State University Press, 1967), p. 52.

[9]Nichols, p. 57.

had to confront rather than to flee."[10] Another significant aspect can be found in the efforts to determine and to evaluate Marshall's interpretation in the public speech situation of the world around him and the methods he employed to communicate the same to his generation.

Method

The method employed in the study of five selected speeches by Marshall is based essentially on Aristotelian standards. The type of criticism is judicial since it seeks to combine the analytic and synthetic approaches with another crucial component of evaluating and interpreting the results. The judicial approach is best explained by Thonssen, Baird, and Braden as follows:

> It reconstructs a speech situation with fidelity to the fact; it examines this situation carefully in the light of the interaction of speaker, audience, subject and occasion; it interprets the data with an eye to determining the effect of the speech; it formulates a judgment in the light of the philosophical-historical-literary-logical-ethical constituents of the inquiry; and it appraises the entire event by assigning it comparative rank in the total enterprise of speaking.[11]

Related Studies

Previous studies of the oratory of Thurgood Marshall have dealt with his legal career in general and his legal

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[10] Nichols, p. 64.

[11] Thonssen, Baird, and Braden, p. 21.

arguments before the Supreme Court in particular. For example, Jamye Coleman Williams wrote a dissertation entitled, "A Rhetorical Analysis of Thurgood Marshall's Arguments Before the Supreme Court in the Public School Controversy" and Randall W. Bland authored a book covering Marshall's entire legal career. However, there are no studies which focus specifically on the subject matter treated in this work.

Organization

Thonssen, Baird, and Braden make two observations that influenced the organization of this study. First, they note that

> rhetoric, to quote Aristotle, is the "faculty of discovering all the possible means of persuasion in any subject." In other words, rhetoric is an instrument by which a speaker can, through the apt use of certain "lines of argument," make an adjustment to a situation composed of himself, his audience, his subject, and the occasion. The impact of these four forces in a social setting gives rise to a certain effect or outcome, the understanding of which concerns the critic. Consequently, to know and to evaluate the outcome of a speech necessitates knowing as much as can be determined about each of the constituents of the speech situation. So canons of oratorical criticism cannot properly be divorced from considerations relating to speaker, audience, subject, and occasion.[12]

Secondly, these authors maintain that the critic of oratory "must delve deeply into the past if he is to understand the present."[13] The critic is reminded of the necessity of

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[12]Thonssen, Baird, and Braden, p. 18.

[13]Thonssen, Baird, and Braden, p. 14.

being "sensitively flexible to ideas and trends that continuously shape and re-shape our patterns of thought and culture."[14]

In this connection, Chapter I consists of information about the problem, its importance, the method of approach, related studies, organization of this study and sources of the speeches. Chapter II discusses Marshall's background, training, experience, and other factors, accounting for the speaker's skill. Chapter III deals with socio-political context of the times. Chapters IV and V contain rhetorical analyses of five speeches--1) Address at the White House Conference on Civil Rights; 2) Address at Indianapolis Housing Conference; 3) "The Constitution and Social Change;" 4) Law Day Address (University of Miami, Florida); and 5) "Law and the Quest for Equality." These five speeches will be divided into two categories--those delivered to general or lay audiences and those delivered to audiences largely made up of members of the legal profession. The speeches will be analyzed in terms of the nature of the occasion and audience, organization or structure, the premises, and use of logical, emotional, and ethical appeals. Chapter VI deals with the style and delivery and the overall effectiveness. Chapter VII attempts to synthesize and draw conclusions based on the previous analyses.

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[14]Thonssen, Baird, and Braden, p. 17.

Sources

Some of the speeches studies are printed in the Congressional Record. Others are printed in law review journals. Several speeches were supplied by the Department of Justice. When two or more written accounts of the same speech appear in several reliable sources in their entirety, each text is almost identical. It should be noted that any difference between the texts rests largely in the format but not in the basic content.

CHAPTER II

MARSHALL'S BACKGROUND AND OTHER INFLUENCES

In order to analyze speeches, the critic must examine factors in the speaker's life which contributed to his development as a speaker. With this in mind, the writer focuses on pertinent facts about Marshall's background and experiences which reflect on his speechmaking, specifically considering Marshall's family background, education, speech training, legal career and philosophy, and personal characteristics.

Family Background

Thoroughgood Marshall, the younger son of William and Norma Marshall, was born July 2, 1908 in Baltimore, Maryland. He was named for his paternal grandfather, "a freeman of Maryland"[1] and a "rough and tough sailorman."[2] However, as a second grader, Marshall shortened his name to "Thurgood" because he "got tired of spelling all that."[3]

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[1] Randall W. Bland, Private Pressure on Public Law (Port Washington, New York: Kennikat Press, Inc., 1973), p. 3.

[2] "The Tension of Change," Time, September 19, 1955, p. 24.

[3] Ibid.

Marshall's individualism, courageousness, and strong convictions can probably be traced back to some of his ancestors. For example, he told an interviewer about his great-grandfather who as a small boy was brought from the Congo to Maryland by a big-game hunter:

> The fellow made his objections to slavery so widely known that the master called him in one day and told him: "Look, I brought you here so I guess I can't shoot you--as you deserve. On the other hand, I can't, with a clear conscience, sell anyone as vicious as you to another slaveholder. So, I'm going to set you free--on one condition. Get the hell out of this country and never come back."

Marshall added, "And that . . . is the only time Massuh didn't get an argument from the old boy."[4] However, as the record goes he did not leave the country; he settled down a couple of miles away, raised his family, lived there until his death, and nobody ever laid a hand on him.[5]

Some biographers imply that Marshall probably inherited his concern for equal justice and human dignity. For example, Isaac O. B. [Olive Branch] Williams, his maternal grandfather, spoke out "fearlessly against police brutality involving a Negro at a civic mass meeting held in Baltimore in the 1970's."[6]

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[4]Sidney E. Zion, "Thurgood Marshall Takes a New 'Tush-Tush' Job," New York Times Magazine, August 22, 1965, p. 68.

[5]"The Tension of Change," p. 24.

[6]Jamye Coleman Williams, "A Rhetorical Analysis of Thurgood Marshall's Arguments Before the Supreme Court in the Public School Segregation Controversy" (PhD dissertation, Ohio State University, 1955), p. 73.

According to family legend, Williams was a sailor who returned from his seafaring adventures with money. He opened up a grocery store in Baltimore and "bought a house next to a white man who turned surley and mean" but who changed his attitude one day when a mutual fence needed repair and suggested that he and Williams accomplish the task together: "After all," said the white man, "we belong to the same church and are going to the same heaven." However, remembering the slight he had received, Williams turned down the olive branch. "I'd rather go to hell," he snapped.[7] Also, Marshall's grandmother, on his father's side, is remembered for strong determination and uncompromising defense of her rights that she demonstrated when the utility company wanted to place a light pole in her front yard: "She just took her chair out to the spot and parked herself there, day after day, until they gave up and put it someplace else."[8]

Other forces that influenced Marshall can probably be attributed to his home and his immediate family. One source notes "The Marshalls lived a happy, comfortable life. Compared to the lives of Negroes in neighborhoods south and

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[7]"The Tension of Change," p. 24.

[8]Lewis H. Fenderson, Thurgood Marshall Fighter for Justice (New York: McGraw-Hill Book Company, 1969), p. 23.

east of them, it was very comfortable indeed."[9] His parents have been described as "intelligent and strongly anti-segregationist"[10] and they encouraged him to get the best education possible.

His mother, a school teacher, closely supervised his academic endeavors. From her he probably learned restraint and moderation. It has been observed that "as a teacher, she was among the aristocrats of Negro Baltimore and her feelings about white-Negro relationships were balanced and moderated by her sense of service and leadership among her own people."[11]

His father, a dining car worker and later chief steward of a Baltimore country club, apparently taught him to defend his beliefs verbally and physically. For example, his father has been described as a man with the "tendency to disputation." Further, Marshall's father "had great faith in facts and devoted much of his free time to assembling data which he used to challenge the logic of even the most commonly accepted concepts. Nothing was taken for granted."[12] Significantly, Marshall "enjoyed arguing with his father, who had a habit of challenging the most

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[9]Saunders Redding, The Lonesome Road (Garden City, New York: Doubleday and Company, Inc., 1958), p. 316.

[10]Zion, p. 68.

[11]"The Tension of Change," p. 26.

[12]Bland, p. 4.

innocent-sounding statements and forcing him to think through many things he would otherwise have taken for granted."[13] On the other hand, the senior Marshall told him to fight when confronted by racial slurs. For example, he said: "If anyone calls you a nigger, you not only got my permission to fight him--you got my order to fight."[14]

During an interview, Marshall pondered how his father had influenced his choice of law as a profession: "He never told me to become a lawyer, but he turned me into one. He did it by teaching me to argue, by challenging my logic on every point, by making me prove every statement I made."[15] One biographer reports, "There was nothing he [William Marshall] liked better than to attend a trial in a courtroom when he had an afternoon off and he seldom missed reading about law cases in the papers."[16] Further, it appears that William Marshall "wished that one of his sons could be a lawyer; sometimes he told Thurgood that . . . he would make a good advocate."[17]

The aforementioned facts probably represent dominant forces which influenced, directly or indirectly, the development of Marshall's dedication to the principles of equality and justice and his speaking ability.

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[13]Fenderson, p. 25.

[14]"The Tension of Change," p. 24.

[15]"With Mr. Marshall on the Supreme Court," U. S. News and World Report, June 26, 1967, p. 12.

[16]Fenderson, p. 25. [17]Fenderson, p. 27.

Education and Speech Training

Marshall attended elementary and high schools of Baltimore. His grades were not impressive although "he was endowed with more than a normal supply of intellectual curiosity."[18] On numerous occasions he was punished for misconduct. The principal repeatedly required him to spend long hours in the basement of the school studying the Constitution. Marshall recalls in one interview that by graduation he had memorized the entire document. Possibly, this experience eventually blossomed into his dynamic career as a constitutional lawyer.

In 1926, Marshall entered Lincoln University, in Pennsylvania, which has been described as one of the half dozen really choice colleges for Negroes; a good school, more strict for learning than most; and staffed almost exclusively with Princeton men.[19] At Lincoln, he studied pre-dentistry but found it boring.[20] During his sophomore year, Marshall began to relish "the thrill of learning under competent instructors and--as a member of the Forensic Society--the challenge of debate."[21]

Marshall appears to have been developing a direction and commitment characteristic of other Lincoln

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[18]Redding, p. 316. [19]Ibid.

[20]Fenderson, pp. 32-33.

[21]Redding, p. 317.

students. Describing Lincoln men of this period, one writer observes that "beneath the selfish ambitions projected in their boastful dreams blazed a furious zeal for the concept of racial equality, burned a bitter hatred of injustice, smoldered a lava flow of race consciousness that alternately anguished and exalted them."[22] Of the experiences that affected his speaking were Marshall's activities as a debater.

As a member of the debate team, Marshall dedicated many hours of the day "preparing his speeches--looking up facts with which to overwhelm the opposition." Obviously, Marshall was proud of his endeavors. In a letter to his father, he wrote, "If I were taking debate for credit, I would be the biggest honor student they ever had around here." His oratorical efforts were commended by his father with great pride. In Baltimore, William Marshall assured the other members of the family: "He's learning just as much, if not more, by having to prepare all those speeches than he'd ever learn just to pass an exam. You know Thurgood--he is thorough. And good, come to think of it. I'll bet he's darn good."[23]

In keeping with his father's prediction, Marshall distinguished himself as a speaker during formal debates

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[22]Ibid.

[23]Fenderson, p. 33.

as well as in informal speech situations. For example, it is a matter of record that in formal debate he was a formidable opponent. On less formal occasions, he exhibited effectiveness as a persuasive speaker:

> One night . . . there was a football rally in the auditorium. Lincoln had lost every game but one since the season opened, and had hoped that a little school spirit might change the team's luck. Thurgood jumped up on the stage and delivered a twenty-minute speech which brought the house down with cheers, shouts, and piercing whistles. Later, he claimed total credit for the tie game played by Lincoln that weekend.[24]

Later, during the semester, Marshall attacked inequality and injustice by direct confrontation. For example, he and five other Lincoln University students successfully desegregated the local motion picture theatre when they proceeded to sit in the section for whites and ignored requests to take seats for Negroes in the balcony. Following this incident, Marshall wrote his father: "The amazing thing was, when we were leaving we just walked out with all those other people and they didn't even look at us--at least as far as I know. I'm not sure I like being invisible, but maybe it's better than being put to shame and not able to respect yourself."[25]

At Lincoln, Marshall developed race consciousness combined with a love for reading. For example, many lengthy "bull sessions" focused on the successes of prominent Negroes

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[24]Ibid. [25]Fenderson, p. 39.

like Paul Roberson and the literary acclaim received by Negro poets and writers of the late twenties. Also Marshall engaged in an intensive program, reading "all the books by or about Negroes he could lay his hands on. Sociology, history, fiction, and poetry were pouring from the press in unbelievable quantity. He read Julia Peterkin and Carl Van Vechten and was skeptical. He read Jerome Dowd's The American Negro and felt changed. He read Carter Woodson's The Negro in American History and was uplifted. He read Du Bois."[26]

According to most reports, his marriage to Vivian Burney during his junior year at Lincoln "became a stabilizing influence on his activities [and] inspired in him an academic zeal."[27] Evidence supports the fact that as a senior his academic achievement was excellent, and he became a superior debater in the Forensic Society. Perhaps, these facts account for his discarding the idea of a career in dentistry and deciding to pursue law studies.

Graduating cum laude with a bachelor of arts degree in the humanities, Marshall submitted application to the "all white" University of Maryland Law School. When his application was rejected, he enrolled in the law school at Howard University in Washington, D.C., a law school

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[26]Redding, p. 318. [27]Bland, p. 5.

"thoroughly dedicated to the enlargement of the Negro's civil rights."[28]

At Howard University, he was tutored by many scholars and renowned professors. To understand the nature of Marshall's law instruction, we must also appraise the philosophy of an administration by Negroes who were beginning to assume direction of higher education for Negroes. The record reveals the following:

> Howard University was experiencing a regeneration. Its first Negro president, Mordecai Johnson, had set out willfully to destroy the reputation for social glamor that, while it brought the university a kind of prestige, had sapped its intellectual and spiritual vitality for half a century. A man of vision, and tremendous drive, Dr. Johnson was one of those Negroes who believed that the ferment of the times, the shifting patterns of thought and behavior, the skeptical inquiry and rebellion of the middle class intellectual against the old dogmas, loosening of conventions, the to-hell-with-it disillusionment of the masses--in short, the change, the doubt, the fear and chaos that characterized the great depression--presented an opportunity for the social reparation of the Negro, if only the Negro would seize it. Johnson believed that the business of education was to incite beneficial change and to help solve the problems that change brings. An institution of learning, while it protected the good and valuable in older traditions, must at the same time encourage that "higher individualism" that constantly makes for new and greater values.[29]

Equally important were the teachers responsible for Marshall's training as a law student. Dr. Mordicai Johnson selected for Howard University's faculty persons of similar convictions and of "undeniable intellectual stature." For

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[28]Redding, p. 320. [29]Redding, p. 319.

example, Alain Locke, "the spiritual father of the Negro renaissance," taught philosophy; Franklin Frazier was in sociology; E. E. Just taught the natural sciences; Rayford Logan taught history; Ralph Bunche was in government and politics; and in the law school were Charles Houston, William Hastie, and James Nabrit.[30]

As a law student, Marshall came under the influence of Professor William Hastie, graduate of Harvard Law School and former editor of the Harvard Review, who "devoted his efforts to students with the most potential." R. L. Bland reports, "In 1930 his most promising student was Thurgood Marshall." Later, Marshall and his former teacher served as legal defense counsels for the NAACP. It should be noted also that Hastie became the first Negro governor of the Virgin Islands; in 1937 he became the first Negro appointed to a Federal Court of Appeals in Philadelphia.[31]

Perhaps the most important influence on Marshall's legal training was Dean Charles Hamilton Houston, practicing attorney for six years and Howard law professor for fifteen years, who has been described as follows:

> A brilliant lawyer who had been a Phi Beta Kappa at Amherst had obtained his law degree from Harvard. . . . A dedicated worker and activist in the newly mobilized civil-rights movement, the dean was also a member of the NAACP. Houston felt that Negro lawyers should be social engineers, and he attempted to make Howard the production center for the new breed of Negro lawyer.

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[30]Redding, pp. 319-320. [31]Bland, p. 6.

Substantial evidence supports the fact that Dean Houston was Marshall's mentor in law school. Houston "taught his protégé the strategy of using existing laws to defeat racial discrimination" and he encouraged Marshall "to know the law thoroughly." Marshall recalled in an interview: "I heard law books were to dig in; so I dug, very deep."[32]

An important influence upon Marshall's speaking should be mentioned. At Howard, he had the opportunity to continue speechmaking in the Moot Court held in the Howard Law Library. Since Hastie, Nabrit, and Houston frequently represented the NAACP in civil rights cases, "Howard Law [School] had become a kind of legal laboratory, where officials of the NAACP met with faculty and some of the brighter students" to determine courtroom strategies against racial inequalities.[33] Also, Marshall frequently observed distinguished lawyers presenting cases to the Supreme Court. It has been reported that "John W. Davis . . . one of the most brilliant lawyers of his time" became "Marshall's hero" while he was studying law at Howard. Additionally, it is said that Marshall "skipped classes to go to the Supreme Court whenever Davis was arguing a case."[34] Marshall's active participation, dedication, and diligence in Moot Court earned respect from his instructors

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[32]Ibid. [33]Redding, p. 320.

[34]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985-A986.

and fellow students. At the same time, he was being observed by leaders of the NAACP. For example, Walter White, then chief executive of the NAACP, recalled Marshall's vibrancy, confidence, and sagacity during these sessions:

> A lanky, brash young senior law student who was always present. I used to wonder at his presence and sometimes was amazed at his assertiveness in challenging positions [taken] by Charlie [Houston] and the other lawyers. But I soon learned of his great value to the case in doing everything he was asked, from research on obscure legal opinions to foraging for coffee and sandwiches.[35]

Marshall's formal legal training at Howard terminated when he graduated in 1933 as valedictorian. Perhaps of greater importance in the making of the Marshall the advocate is the fact that his close relationship with Houston continued long after graduation.

Legal Career and Ideology

Following his graduation from Howard, Marshall's commitment to the campaign for human rights and equal justice crystalized as he began private practice in Baltimore. Economic depression made clients and fees scarce. But Marshall appeared to be a dedicated lawyer with a mission. Saunders Redding writes:

> His clients were poor in everything except frustrated rage at the injustices of dispossessions, evictions, police brutality, and excessive penalties for offenses. Marshall, who had "learned

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[35]Redding, p. 320.

> what rights were," threw himself into these cases with a zeal that the prospect of large fees could not possibly have stimulated. He took many of them without the slightest expectation of fees. He became known in Baltimore and the surrounding county as the "little man's lawyer." He became known as a crusader in the war for human rights.[36]

Of seemingly importance to Marshall's development as a speaker were his experiences assisting Charles Houston who had become special counsel of the National Association for the Advancement of Colored People (NAACP). This position required that Marshall devote "all of his time and intelligence to the kind of legal work he loved" and enabled him to join "an organized, cooperative effort to attain ends which, he felt, must no longer be compromised." Houston admitted to Marshall that this job "would also mean exhausted patience, discouragement, privation, and even physical danger." Disregarding this fact and that he would receive only a meager salary, "Marshall accepted with alacrity."[37] As the record goes, Marshall "worked eighteen to twenty hours a day" and "traveled fifty thousand miles a year."[38]

As an NAACP attorney and later Director-Counsel [in the 1930s, it was probably the most demanding legal post in the country],[39] Marshall spoke frequently to NAACP members and other groups interested in alleviating racial

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[36]Redding, pp. 320-321. [37]Ibid.

[38]Redding, p. 328. [39]Redding, p. 321.

discrimination and injustice. However, it seems that his acclaimed and most effective speaking took place in the courts of many states where he defended successfully most cases involving black Americans and other minorities or poor people whose constitutional rights had been threatened or denied. "In one Southern court after another, local, state, and federal--thirteen times in five years--he argued that 'injury results to the human personality subjecting or subjected to' civil inequalities."[40]

It appears appropriate to discuss some instances of Marshall's "matchless years of experience in civil law" and proficiency in the courts which probably confirmed his belief that the equalitarian concepts embodied in the Declaration of Independence and that the constitutional prohibition of distinctions based on race and color must become a reality.[41]

Marshall's legal career afforded many opportunities to attack inequalities and discrimination in many areas, particularly in educational opportunities. Historians note that "the very first brief prepared by Marshall in his new job was in a suit brought against the University of Missouri to admit a Negro to the law school." In this particular case, Lloyd Gaines applied for but was denied admission to the university "on the grounds that a state provision to finance the graduate and professional training of Negroes

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[40]Redding, p. 328. [41]Redding, p. 327.

in schools outside of the state constituted equality." Since lower courts had upheld the state's position that to admit a Negro to the University of Missouri was "contrary to the constitution, laws and public policy of the State,"[42] the case was taken to the Supreme Court. About the argument and the decision, Redding comments:

> Marshall based his argument squarely on that clause in the Fourteenth Amendment which forbids the state to deny any person under its jurisdiction equal protection of the laws. The United States Supreme Court was asked to decide on the applicability of this clause to the case at hand. On December 12, 1938, it ruled six to two that "equality of education must be provided within the borders of the state." It was a broad decision that not only reaffirmed an earlier opinion that "separation (of the races) is legal only when it provides equality between the races," but opened the way for legal action to compel the equalization of school funds, teachers' salaries, and school facilities of all kinds.[43]

As the NAACP's defense counsel, Marshall participated in more than fifty cases arguing twenty-nine of the thirty-two cases before the Supreme Court and winning all but three and culminating in the landmark decision of 1954--Brown v. Topeka Board of Education. Regarding the outcome of this last case, it has been said: "On Monday, May 17, 1954, the Supreme Court handed down its epochal decision. 'We cannot turn back the clock to 1868 . . . when the (Fourteenth) Amendment was adopted or even to 1896, when Plessy v. Ferguson was written. . . . We conclude that in

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[42]Redding, p. 322. [43]Redding, pp. 322-323.

the field of public education the doctrine of 'separate but equal' has no place.'"[44] Further, it has been remarked that Marshall set a unique record in the historic Brown case since he opposed for the first time the late John Davis, the undisputed Dean of Constitutional law and won.[45]

Marshall's many victories against injustice have been acknowledged by numerous sources. For example, one source enumerates other areas:

> Thurgood Marshall stood with Authurine Lucy at the closed doors of the University of Alabama to give her the legal support enabling her to enter it. He attacked the fortress of Central High School in Arkansas with the Little Rock Nine, those nine brave Negro children who became the first blacks to enter that high school. He charged through the South before the triumphs of the late Martin Luther King, arguing, convincing, crusading for first-class citizenship for black Americans, shooting down with his fiery legal ammunition the "colored" signs in public washrooms, classrooms, restaurants, buses and trolley cars. He demanded and got an end to segregation in jails, on juries and in other long sacred forts of lily-whiteness.[46]

It should be added that these victories can be largely accredited to legal prowess but equally important is the fact that Marshall and his staff exhibited unusual perception. For example, Loren Miller writes:

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[44]Lerone Bennett, Jr., Before the Mayflower: A History of the Negro in America 1619 - 1964 (Baltimore, Maryland: Penguin Books, 1966), pp. 311-312.

[45]"Tension of Change," p. 27.

[46]Fenderson, p. 103.

> Judicial interpretations change as the social climate changes. Vast changes, far beyond the ability of any man to foresee in 1930, were to sweep over the United States, and the world, in the area of race relations, in the . . . decades after 1930. Old ideas perished, and new and revolutionary concepts replaced them. An appreciable part of the genius of the NAACP lawyers lay in their ability to take them at their flood and translate them into constitutional concepts palatable to Supreme Court justices, who were . . . propelled in new directions by social change and architects of that change. NAACP lawyers could not have won the constitutional victories that lay ahead of them without their technical and legal skills, even in the context of the changing climate of the times. But with the greatest of skill and preparation, they could not have prevailed in an unchanged climate or in a closed society.[47]

Similarly, Jamye Williams comments on strategy in the Brown case:

> Marshall and his colleagues recognized that on their side, in addition to the law, was the necessity of preserving in the eyes of the world the prestige of the United States as a democracy. They were also aware that world conditions--the striving for freedom of colored peoples all over the world--were a mitigating factor. Not to be overlooked were the social and economic changes in the structure of American society--"the felt necessities of the time."[48]

Another observation seems to summarize Marshall's accomplishments during this period in his career: "Thurgood Marshall's contributions to the amelioration of the Negroes' lot, and, through them, to the causes of civil rights, in

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[47]Loren Miller, The Petitioners: The Story of the Supreme Court of the United States and the Negro (New York: Pantheon Books, 1966), p. 261.

[48]Williams, p. 202.

general, have been unquestionably significant. Both as a symbol and as a legal tactician, his work is crucial, particularly in the 1940's and the 1950's. Especially his strategy in the Brown case, and its antecedent events, looms giant."[49]

Concerning his stature during the sixties, it has been noted that Thurgood Marshall was the symbol of hope of this age. He was also the bulldozer of the Negro revolution of the sixties. By influencing almost single-handedly crucial parts of the constitutional law of the land, Marshall cleared away the legal rubble and placed Negroes within striking distance of their goals.

Perhaps, the following represents an enlightening comment on his legal victories as an NAACP lawyer and their impact on society:

> The opinions in these cases define the constitutional rights of the Negro as a citizen. In addition, they broaden the interpretation of constitutional rights for all citizens and extend civil liberties for whites as well as Negroes.
>
> The activity of the lawyers acting for the NAACP has added to the body of law on civil rights for all Americans. The association by pressing these cases, has brought nearer to realization the ideal embodied in the quotation engraved over the Supreme Court in Washington, D.C.: "Equal Justice Under Law."
>
> While it may be true that laws and constitutions do not act to right wrong and overturn established folkways overnight, it is also true that the reaffirmation of these principles of democracy build a body of public opinion in which rights and

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[49]Bland, p. 116.

> privileges of citizenship may be enjoyed, and in which the more brazen as well as the more sophisticated attempts at deprivation may be halted.[50]

In 1961 Marshall left his position with the NAACP. He was appointed by President John F. Kennedy to a Federal Judgeship to the Second Circuit Court of Appeals. Commenting on Marshall's career, Arthur M. Schlesinger, Jr. remarked that "Marshall had been the leading figure in the legal strategy of civil rights; and his elevation to the federal judiciary therefore implied a recognition of the merits of his cause as well as of his own qualities."[51] As a federal judge, Marshall received his share of criticism. In response, his supporters replied that Marshall was studying matters between tax law and admiralty law in order to prepare himself thoroughly for his appointment to the Office of Solicitor General of the United States. Regarding his judgeship, one comment is worthy of mention: "One wishes to be fair. Freshman judges are not assigned to milestone cases. The most luminous judicial mind would be hard put to shine in most of the cases that were assigned to Marshall for opinions. The best that can be said is that Marshall dutifully did his work." Further and perhaps significantly, the record shows that "in four years none of Marshall's ninety-eight opinions for the majority was

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[50]Thurgood Marshall, "Equal Justice Under Law," The Crisis, 40:201, July 1, 1939.

[51]Bland, p. 119.

reversed by the Supreme Court of the United States."[52] In fact, "some became law."[53]

After four years as a federal judge, Marshall was nominated Solicitor General of the United States. In this position he was the government's chief lawyer before the Supreme Court: he determined the cases to be taken before the Supreme Court; and he was the third-ranking official in the Department of Justice. As Solicitor General, "He was . . . largely responsible for making policy, deciding what particular arguments to make, what to give up to the opposition and sometimes even to decide when the government came out second best. Also, the Supreme Court relied 'heavily' upon Marshall for accurate explanation of legal problems."[54]

The following comment summarizes Marshall's performance as Solicitor General: "Between 1965 and 1967 Marshall argued nineteen cases for the government before the Supreme Court of the United States and was victorious in all but five. As Solicitor, the areas of constitutional law with which Marshall was chiefly concerned were those of civil rights and the use of listening devices on the part of federal law enforcement officers."[55] Specifically, Marshall

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[52]Bland, p. 129.

[53]Zion, p. 69.

[54]Fenderson, p. 116. [55]Bland, p. 133.

prepared briefs and argued cases dealing with Negroes' rights to participate completely in the electoral process. Congress passed the Voting Rights Act of 1965; but in 1966 South Carolina challenged the constitutionality of certain provisions of the Voting Rights Act. The Solicitor General headed the team writing the brief for South Carolina v. Katzenbach. Regarding his endeavors in this case, it has been reported:

> Pleading that the bill of complaint be dismissed, Marshall in written argument contended that the 1965 Act was a proper application of the Fifteenth Amendment. He noted that Congress is not confined by its express powers merely to allow the courts the authority to strike down state laws in violation of the Amendment, but that it may take positive action as well. This . . . is "a necessary corollary" of the regulatory function of legislation. The Solicitor General pointed out that neither Article I, Section 2, of the original Constitution nor the Seventeenth Amendment confers on the state the absolute authority to grant or withhold the franchise on any conditions it wished. As far as doing so on the basis of race or color, Marshall concluded that the Constitution expressly forbids such action. [Following oral argument by the Attorney General of the United States, the Supreme Court dismissed the bill of complaint.][56]

Marshall presented oral argument in another case involving voters' rights. This case--Harper v. Virginia Board of Elections--dealt with "state imposition of poll taxes in local elections." According to reliable sources, Marshall asserted that "the poll-tax requirement was a denial of the 'equal protection of the laws' of the Fourteenth Amendment." Further, it has been said:

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[56]Bland, p. 139.

> Marshall reasoned that those portions of the Constitution referring to "the Qualifications requisite for Electors of the most numerous Branch of the State Legislature" do not confer on the states the unbridled license to exclude any citizen from the electoral process that it may choose at any given time. In conclusion, the Solicitor General pointed out that both Sections 1 and 5 invest some authority in Congress to regulate state voting qualifications and thereby prove that state prerogatives in these motives may be subjected to justifiable restrictions.

Subsequently, the Supreme Court responded to Marshall's argument favorably. It decided that the Virginia requirement represented "a violation of the equal-protection clause of the Fourteenth Amendment."[57]

Marshall successfully argued not only civil rights cases but also cases involving labor-management relations, internal revenue violations, corporate structures, etc.[58] It appears that Marshall's performance impressed President Johnson. Nominating Marshall Associate Justice of the Supreme Court of the United States in 1967, Johnson remarked: "He is the best qualified by training and by valuable service to the country."[59]

The record shows that reaction to Marshall's nomination to the Supreme Court was "overwhelming and, for the most part, favorable."[60] Legal scholars and associates praised his ability. For example, Page Keeton, Dean of

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[57]Bland, pp. 142-143. [58]Bland, p. 150.

[59]Editorial, "Supreme Court Justice Thurgood Marshall," Negro History Bulletin, October, 1967, p. 4.

[60]Bland, p. 151.

University of Oklahoma Law School, said: "Thurgood Marshall was an outstanding trial attorney and was well qualified for the position." G. Theodore Mitau, Chancellor of the Minnesota State College System, said: "I would say he was uniquely qualified for the appointment."[61] His appointment was "hailed" by NAACP Executive Secretary Roy Wilkins, Marshall's longtime associate in the fight for equality and justice, as "a highly significant and well-merited appointment." Wilkins continued:

> The appointment . . . is a tribute to Mr. Marshall's brilliant performance as the nation's foremost civil-rights lawyer. It is also an indication that leadership in the fight for freedom is no bar to high public office.
>
> The veteran civil rights attorney . . . carries to his new position extracrdinary experience in the federal courts, a wealth of knowledge of federal procedures, and a breadth of understanding rare even among the country's most outstanding and successful lawyers. This understanding will help to make him a good judge for all Americans of whatever race or station.
>
> He carries, also, the good wishes of his legion of friends and admirers, including 20,000,000 Negro Americans whose aspirations for first class citizenship he voiced so eloquently in his pleadings and victories at the bar.
>
> Those of us who have been privileged to work with him for more than two decades in the struggle for human rights and dignity will miss his dedication, his wise counsel, and his unflagging devotion and courage. Our loss is the nation's gain in which all of us have a share.[62]

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[61] Bland, p. 152.

[62] "Marshall Nomination Hailed by Wilkins," The Crisis, 62:559, November, 1961.

Finally, another of Marshall's associates wrote:

> Marshall, in the large, is as well trained and qualified for the Court as have been most appointments to that body. . . . Marshall had long and successful experience in the handling of cases before the Court itself and in constitutional law generally. This put him above the rank and file of most appointments. His qualifications, in turn, might be rated below those of the great legal scholars and learned judges who have in the past on occasion been appointed--say Holmes, or Frankfurter. Don't forget, though, that [John] Marshall, Taney, Jackson, and Brandeis were all political lawyers with no prior former judicial experience. And they turned out to be among the greatest.[63]

Personality and Physical Traits

Authorities in the field of rhetorical criticism remind us that

> the speaker's voice, diction, gestures and other visual and auditory elements are highly revealing. The audience sizes up the speaker's total impression as tactful, sincere, friendly, pleasant, honest, or . . . as pugnacious, indifferent, ignorant, insincere. These traits describe not only the speaker's character as he impresses his listeners and observers, but in the long run, the genuineness of the man or woman.[64]

In person, Thurgood Marshall is a man of striking appearance, physically large ("6 ft. 2 in., 210 lbs.").[65] Photographs taken in the sixties reveal Marshall as tall, handsome and well-groomed. National Review notes, "He is an

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[63]Bland, p. 153.

[64]Thonssen, Baird, and Braden, p. 452.

[65]"The Tension of Change," p. 24.

affable, out-going, and highly attractive human being."[66] On the other hand, Time Magazine in 1955 reports that "his tense personality reflects the tensions on his job and his time and his nation. And, somehow, also, his personality reflects the symmetry of the Constitution he serves and expounds."[67] Even as a student, Marshall has been described as follows:

> Once he began to discover himself, a fundamental integrity fixed the abiding elements of his character in a pattern which, though still incomplete, could scarcely be mistaken. . . . He was not only honest but frank to the point of insult. He had a natural affinity for the underdog, for arguing the unpopular side ("just to exercise his brains"), and for fighting against the odds. He would one day be satisfied with nothing less than complete dedication. Without willing it or intending it, he would one day find composed within himself a pride and passion of race and a shame and hatred of racial inequality that marked him a "new Negro."[68]

One psychologist friend characterizes Marshall as "a delicate balance of turmoils."[69]

Other aspects of Marshall's appearance and personality seem significant. His distinguished and commanding presence often impressed his contemporaries. For example, Eric Sevaried, who heard Marshall on numerous occasions,

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[66]James J. Kilpatrick, "The Term's End," National Review, July 25, 1967, p. 804.

[67]"The Tension of Change," p. 24.

[68]Redding, p. 318.

[69]"The Tension of Change," p. 24.

commented: "What stayed with me, what was to be impressive . . . in his every expression and gesture, one was made conscious of the presence of an American, period."[70]

Early in his legal career, Marshall began "to take on with certitude and passion his race's role as the catalyst in the slow-working moral chemistry of America."[71] For example, it has been reported:

> Thurgood Marshall's feeling of love and awe for the Constitution is exceeded only by his love and awe toward his clients, the Negroes, and especially Negroes of the South and the border states, who, facing threats of firing or beating or even death, continue to sign the legal petitions and complaints that must be the starting point of Marshall's cases from the slum and the cotton field to the high and technical levels of the Supreme Court.
>
> Of these local NAACP lawyers in the South, Marshall says: "There isn't a threat known to men that they do not receive. They're never out from under pressure. I don't think I could take it for a week. The possibility of violent death for them and their families is something they've learned to live with like a man learns to sleep with a sore arm."[72]

Speaking to persons attending the 1948 Annual NAACP Conference in Kansas City, Missouri, June 23, 1948, Marshall seems to project similar confidence and zeal. At one point during

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[70] U.S., Congress, Senate, Subcommittee of the Committee on the Judiciary, Nomination of Thurgood Marshall to Be Solicitor General of the United States, Hearing, 89th Congress, 1st Sess., July 29, 1965 (Washington: Government Printing Office, 1965), p. 9.

[71] Redding, p. 321.

[72] "The Tension of Change," p. 23.

the speech Marshall said: "But we believe that we people in the United States have the tools to make democracy work. We have our votes. We have the various arms of government. . . . Behind all of these, we have the Constitution of the United States to serve as a democratic frame of reference for the efforts of all of us. . . ."[73] Finally, Marshall asserted: "We can discharge this obligation only by dedicating our daily actions at home, in the shop, in the office, in our churches, in our schools, and in our social life to the fundamental American democratic principles of removing every semblance of racial and religious distinctions from every aspect of American life."[74]

Making other occasional speeches, Marshall seems to be remembered as a man familiar with inequality and injustice who believed "that the equalitarian concepts embodied in the Declaration of Independence and the constitutional proscription of distinctions based on race and color should be made to apply."[75] For example, addressing the Forty-fifth Annual Convention of the NAACP in Dallas, Texas, on June 30, 1954, Marshall discussed the Supreme

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[73]Thurgood Marshall, "Restrictive Covenants and the Segregation Picture" (Address before the thirty-ninth annual conference of the National Association for the Advancement of Colored People, Kansas City, Missouri, June 23, 1948), p. 11. (Mimeographed.)

[74]Marshall, "Restrictive Covenants and the Segregation Picture," p. 13.

[75]Redding, p. 327.

Court decision of May 17 that found school segregation laws in Kansas, Delaware, Virginia, and South Carolina unconstitutional. He added:

> Compulsory racial segregation is not only immoral and illegal, it is now un-American. What does this mean? It means that if the law of the land is followed in good faith, every American can now move about in his community without the threat of being penalized by racial segregation statutes. It means good Americans can decide for themselves whether they want to or do not want to associate with other Americans. It merely means that we are getting back to the bedrock of democracy, the necessity for preserving and protecting the equality of man--the equality of the individual.[76]

In keeping with some social utility principles and conveying his firmest convictions, Marshall continued:

> The effect of this decision [Brown] in world politics today has been tremendous and beyond the expectation of anyone. Every nation except Russia and her satellites has commented most favorably upon these decisions. The decisions have been heralded as a new hope for democracy and have been generally accepted as such. But these same countries are watching most carefully to see what implementation will come from local school boards in the several southern states now that the law has been made clear to them. The movement toward implementation of the law of the land reveals many bright spots and many dark ones. I, for one, do not intend to waste my time or the NAACP's time in debating back and forth statements made by some politicians of the South who have repeatedly demonstrated that solely for political ambitions they not only put themselves above the law of the land, but are willing to wreck the land, if necessary, in order to get re-elected. We have too much work to do to spend our time on people who have no faith in the American tradition,

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[76]Thurgood Marshall, "Address by Thurgood Marshall, NAACP Special Counsel" (Address before the forty-fifth annual convention of the National Association for the Advancement of Colored People, Dallas, Texas, June 30, 1954), p. 2.

> or who interpret that tradition selfishly in the narrow terms of their own convenience and personal or provincial racial bigotry. Nor do I believe we should waste too much time on the few Negroes in the country who might have been so indoctrinated by these politicians or by their long oppression, as to actually believe that they are better off as second-class citizens than as 100 percent Americans. Rather, I think we should spend our time on working with men of goodwill who have faith in our government, faith in our democracy and are willing to work out their salvation within the framework of the law of the land. Fortunately for our nation, this latter group constitutes the vast majority that has enabled us to survive every national crisis of date.[77]

Marshall's experiences in the courtroom as well as other public speaking probably equipped him to use appropriate bodily action to reinforce his ideas. For example, on numerous occasions during the fifties and sixties, he spoke to college students, teachers' organizations, and other groups throughout the country. Frequently, people addressed in Louisiana remark that he maintained good eye contact, varied his pitch, rate, volume, and quality appropriately, and used a variety of gestures and movements to emphasize his ideas.

Having dedicated most of his life to the practice and administration of justice and to acquiring a thorough knowledge of the Constitution, it is not surprising that Marshall was selected to attend the 1961 Kenya Constitutional Convention in London, England. Following this experience, Marshall remarked that he was "going to understand our

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[77]Ibid.

problems in the USA . . . better than before." Similar experiences confirm confidence of the nation's highest officials in Marshall's dedication to democratic principles and his competence as a communicator. For example, he was President John Kennedy's personal representative at the independence ceremonies in Sierra Leone in Africa, and he was head of the United States delegation to the Third United Nations Congress in Stockholm.[78] Later, having earned the President's respect, President Kennedy nominated him for appointment to the Second Circuit Court of Appeals. During the hearings Senator Kenneth Keaton of New York declared high esteem for Marshall: "Rarely does a man, regardless of race, earn the kind of professional and personal respect that has come to Thurgood Marshall. He has helped shape some of the most important legal advances of the decade in the field of civil rights."[79]

Marshall was acclaimed for his forensic speaking as Director-Counsel for the NAACP. He argued successfully hundreds of cases dealing with civil rights and segregation which earned for him the label "Mr. Civil Rights"[80] and "Mr. Desegregation."[81] Further, it is generally agreed that "the

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[78]Fenderson, p. 106. [79]Fenderson, p. 108.

[80]Jessie H. Roy, "Judge Thurgood Marshall: The Solicitor General of the United States," Negro History Bulletin, January, 1966, p. 85.

[81]Bland, p. 7.

name indelibly stamped on this victory [the United States Supreme Court's decision in the Brown v. Topeka Board of Education case holding segregated schools contrary to the Fourteenth Amendment] is Thurgood Marshall."[82] One historian adds that "to Negroes of the rank and file he represents what folk heroes have represented immemorially: the ability to outwit, outscore, and eventually overcome forces of entrenched and organized oppression. . . . He has accomplished this without becoming pompous or thinking himself too important."[83] Also, for his numerous courtroom victories he was extolled "in legal circles as a lawyer's lawyer--an ideal person to represent the government and the people."[84]

Others observing Marshall in the courtroom suggest the intelligibility and the flexibility of his voice. For example, it is stated that "in a calm, moving voice, he poured out his innermost beliefs regarding segregation." Also, his "superb control" seems obvious.[85] On the other hand, the following remark is made about Marshall's vocal skills in a different setting: "He is at his sincerest and loudest (and that is very sincere and quite loud) in declaring that he is only one of millions, white and Negro,

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[82]"The Tension of Change," p. 23.

[83]Arna Bontemps, 100 Years of Negro Freedom (New York: Dodd, Mead and Company, 1961), p. 249.

[84]Fenderson, p. 118. [85]Fenderson, p. 91.

whose courage, sweat, skill, imagination, and common sense made the victory possible."[86] Others have suggested Marshall's exceptional vocal skills in the courtroom as well as in other speaking situations. For example, National Review reports that in the court he was "brilliant" and "articulate."[87] Eric Sevaried comments that Marshall was "impressive and humbling . . . in everything [he] said."[88] Time Magazine disclosed that he argued the law in "meticulously scholarly tones" and "he has an equally comfortable drawling Negro dialect."[89]

Following a personal interview, John Dorsey wrote an article about Marshall which was printed in The Baltimore Sun of February 20, 1966. In part, Dorsey provides important testimony about Marshall's vocal qualities and his ability to adjust voice to audience and situation. For example, Marshall's voice as Solicitor General is described as follows: "He represents his positions before the Supreme Court with simple eloquence and in distinguished tones that bear no trace of the Negro accent he puts on in less formal situations." The interviewer continues: "One

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[86]"The Tension of Change," p. 23.

[87]Kilpatrick, p. 804.

[88]Bland, p. 117.

[89]"The Supreme Court Negro Justice," Time, June 23, 1967, p. 18.

of Marshall's chief assets in dealing with frightened and doubtful plaintiffs in civil rights cases in the Deep South was his adjustable Negro accent, which grew more and more pronounced the farther south he went. It made others feel at home and confident in his presence."[90]

Marshall's vocal variety and the unique nature of his personality led one interviewer to make the following observation: "He is a big man . . . with a voice that can be soft or raucous, manners that can be rude or gentle or courtly, and an emotional pattern that swings him like a pendulum from serious to absurb. His dignity can slide easily into arrogance and his humility into self-abasement, but not for long. Humor--his own--brings him back to center."[91] Another description confirms his sense of humor but more importantly adds other dimensions:

> What he was amounted to a yeasty mixture of brash assertiveness, a sharp and sportive sense of humor, an instinct for people, an amused irreverence for the "solemn finer things of life," and mercenary ambitiousness. At forty-five he retained his sense of humor and his gregariousness, but all else changed. At forty-five he had defended in a hundred courts of law the finest concepts of human dignity and equality of civil rights, had won twelve of fourteen cases on issues before the highest court in the land, and was everywhere acknowledged to be the leading civil rights lawyer of his time.[92]

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[90]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985-A986.

[91]"The Tension of Change," p. 24.

[92]Redding, p. 315.

One example of Marshall's brashness combined with other factors which contributed to his effectiveness as a speaker has been included in the account of an incident in Austin, Texas. As the record shows, Marshall traveled to Dallas, Texas, to investigate a case involving the assault of a Negro physician who had attempted to assume jury duty in accordance with a summons he had received. After gathering the facts pertaining to this case, Marshall went to Austin unannounced and secured a conference with Governor James Allred. What transpired is significant: "The governor at first seemed offended by such brashness, but he soon got over it. Marshall neither looked nor sounded like an agitator. He talked to the governor with quiet sincerity. His whole, somewhat easygoing manner bespoke the belief that a reasonable man will be moved by reason. Within the hour Allred 'ordered out the Texas Rangers to defend the right of Negroes to jury service.'"[93]

Marshall's supporters and detractors commend his alert, powerful mind and his scholarly traits. Evidence supports the fact that Marshall the scholar could be found "reading, noting, thinking, remembering--late into the night almost every night."[94] Also, Marshall has been described as "a sound, conscientious, imaginative legal scholar." Many persons remark that "what he decides to do

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[93]Redding, p. 323.

[94]"The Tension of Change," p. 24.

about a thousand practical legal questions will interact powerfully with the decisions and attitudes of other men of similar and quite different and opposite views."[95]

Marshall's preparation for his appearances in court was intensive and extensive. For example, one writer comments on the five years of endeavors and collaboration preceding the victorious decision in the Brown v. Board of Education case:

> This included not only lower-court hearings attacking inequalities in the salaries of Negro teachers, in educational opportunities, in employment, in travel accommodations, and in the exercise of the ballot--thus establishing precedents and erecting a body of confirmable opinion item by item; but it also included periodic conclaves the likes of which had never before been convened for such purpose.
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> For days at a time, year after year, social scientists, psychologists, historians, legal experts, and educators--white and colored, and all volunteers--met in New York to wrestle with every aspect of the problem that Marshall and his staff thought likely to be raised in the courts of law. Less frequently, in the days just before an actual hearing, the staff of NAACP lawyers . . . would hold moot court in the Howard Law School Library, with faculty members acting as judges. "They're going to try everything in the book," Marshall said, referring to the opposition. "Our job is to stay ahead of them."
>
> But even keeping up with "them" required tremendous emotional, intellectual, and sheer physical energy.[96]

Some references to Marshall's forensic ability, made by his associates, appear to document his persuasiveness. For example, it has been noted: "Normally a person who speaks in italics, Marshall, once in the courtroom, has been

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[95]"The Tension of Change," p. 23.

[96]Redding, pp. 327-328.

described . . . as a persuader who has often taken the opposition off guard and, in Langston Hughes' words, 'has moved many a judge to search his conscience and come up with decisions he probably did not know he had in him.'" After observing Marshall's skillful courtroom tactics, Francis X. Beytagh, Jr., who worked under Marshall during his tenure as Solicitor General, remarked: He is an effective lawyer because he has common sense and good instinct for facts."[97] Similarly, it has been reported that judges and lawyers were not only impressed by "his logic, his knowledge of the constitutional rights, and his determined but gentlemanly manner" but also by his "convincing and persuasive words."[98]

Some other comments have been made about Marshall's presentations as Solicitor General of the United States. One historian describes his style as follows:

> In this court [the Supreme Court of the United States], where most would talk nervously, Marshall was completely ease. His style was just right for the elegance of the room. . . .
>
> Marshall's performance here would be quiet when compared with the explosive civil rights battles he had fought earlier for the NAACP, but the emotional power would be the same.
>
> He was presenting a case involving protection, equal rights, equal opportunity--the kind he was familiar with--but there was no yelling, no wild gesturing. His argument was strong but respectful as he asked the Supreme Court to let the government bring federal criminal charges against persons accused of two civil rights slayings. . . . Marshall won the case.[99]

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[97]Bland, p. 8.

[98]Fenderson, p. 100. [99]Fenderson, p. 117.

Apparently, the strength of his belief in equal justice increased over a period of time. For example, before becoming an NAACP lawyer and engaging in private practice, it was his custom to represent clients without charge. It has been said that these experiences, along with many others as a criminal lawyer, probably furnished the foundation for Marshall's continuing commitment to protecting the rights of the accused. Further, it seems to have afforded him opportunities to develop his forensic speaking. More importantly, it enables one to understand other facets of his character. In another instance during an interview in 1955, Marshall--"the man at the vortex of the Negro issue in the U. S."--revealed his staunch conviction regarding the systematic remedy of the problem of inequality: "Failure to achieve an orderly solution of the Negro problem would be--and this Thurgood Marshall feels deeply--much more than defeat for the Negro. It would be a failure at the very core of the American genius--its capacity for forms strong and shrewd enough to withstand the tensions of change."[100]

After taking oath of office of Solicitor General in 1965, Marshall's comments reveal another dimension of his character. However, his comments, during the Senate Hearings [probably in response to the opposition but for the benefit of all], seem to merit attention. Marshall said:

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[100]"The Tension of Change," p. 23.

> I know of no reason that would prevent me from doing the best job I could and my background as an advocate usually on the defendant's side, and while on the Court [shows that] I have participated in every type of case that comes before the Federal Courts. . . .
>
> I'm an advocate. . . . And personal emotions one way or the other, once you become an advocate, that is it. . . . I am certain that there is no possible reason that I could have to not adequately represent this government which is, after all, my Government, just as it is all of our Government.[101]

F. X. Beytagh, Marshall's assistant from August 1966 until Marshall became Supreme Court Associate Justice, reveals interesting facts about Marshall's personality and insight into the nature of the man:

> The office operated in a relaxed and easygoing manner, reflecting his personality, and the quality of the work done . . . was extremely good, not departing in this respect from the high standards set by . . . Cox and his predecessors. In oral argument Marshall was very effective in cases in which he had a distinct interest, less so in others. . . . He can be tough with those who oppose or cross him. . . . In fact, in many respects he reminded me of . . . former Chief Justice Earl Warren. He has a real concern for people and a distrust of large institutions that depersonalize life. He is an example of a minority group member attaining success in his chosen profession by working within the system while trying to change, and actually changing it. . . .[102]

In 1967, Marshall received the ultimate reward for devoted service in the fight for justice and equality in the United States and for his exceptional abilities as a constitutional lawyer. When he nominated Thurgood Marshall to be an Associate Justice of the Supreme Court of the

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[101]Bland, p. 130. [102]Bland, p. 150.

United States, President Johnson said: "I believe he earned that appointment. He deserves the appointment. He is the best qualified. . . . I believe it is the right thing to do, the right time to do it, the right man and the right place." Continuing the President asserted: "I believe he has already earned his place in history, but I think it will be greatly enhanced by his service on the Court."[103]

After taking oath, Marshall said, "Let me take this opportunity to reaffirm my deep faith in this nation and to pledge that I shall ever be mindful of my obligation to the Constitution and to the goal of equal justice under law."[104] In response to Marshall's new status, one source comments about Marshall's future role:

> Thurgood Marshall has been dedicated to the practice and the administration of justice and his life's work shows that he has played not only a leading role in past years but that a quiet and pertinent role will be played in his new appointment manifesting always his high standard of legal ability, an intellectual acumen, a high code of ethics, clear reasoning and hard work--all of which he has practiced through the years. These characteristics have been demonstrated in his years as an attorney and a judge, dedicated to the highest American ideals of constitutionalism. He will be a justice who believes that the American people,

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[103]Bland, p. 151.

[104]"With Another 'Liberal' on High Court," U. S. News and World Report, September 11, 1967, p. 21.

> ultimately, will follow the law as interpreted by the Supreme Court.[105]

Marshall possesses the physical attractiveness which contemporary audiences deem essential. Further, his disposition is sometimes easygoing and charming and at other times serious, sensitive, and tense. Perhaps, more importantly, his associates and other observers contend that Marshall is qualified to speak about equal justice. Marshall states his views in forcible, lucid language while manifesting "intrinsic goodness and honesty, sound judgment, and interest in the well-being of the audience. . ., which induce listeners to approve the arguments given in a speech."[106] Apparently, Marshall's fondness for and familiarity with literature, his knowledge of the Constitution combined with concern for people which earned his reputation as a "strict but always human expert on the Constitution"[107] along with his personal and professional experiences and his eagerness for work characterized as thorough and systematic represent the powerful sources of his stature as a contemporary orator.

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[105]Editorial, "Supreme Court Justice Thurgood Marshall," Negro History Bulletin, October, 1967, p. 5.

[106]Winston Lamont Brembeck and William S. Howell, Persuasion: A Means of Social Control (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1952), pp. 244-245.

[107]Fenderson, p. 118.

CHAPTER III

HISTORY AND DEVELOPMENT OF THE NEGRO'S STRUGGLE FOR EQUALITY

Public address functions within the framework of a social and political milieu. Therefore, the critic must understand the historical trends that gave rise to the speech. Study of these forces enables the critic to understand the specific events in its relation to the whole of which it is a part.[1]

This chapter reviews pertinent issues and events preceding and influencing Thurgood Marshall's speaking. In general, it seems appropriate to focus on the nature of inequality and injustice for American Negroes and to examine the forces which contributed to the progress made toward equality for all in the twentieth century, especially during the forties, fifties, and sixties. The response of the three branches of the federal government--legislative, executive, and judicial--will be addressed. Special emphasis will be placed on the United States Supreme Court's involvement and the legal steps taken by the NAACP to eliminate inequality and injustice in some of the major areas in which

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[1]Lester Thonssen, A. Craig Braid, and Waldo M. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), p. 353.

civil rights problems occur; i.e., employment, voting, education, housing, criminal justice, etc.

The following data provide an overview of the denial of equality and justice for Negroes which contributed significantly to the status of human rights and probably gave rise to Marshall's speeches from 1965 to 1967. For several decades prior to the mid-sixties, Marshall directed the NAACP's legal strategy to promote equal rights for all Americans and federal government, particularly the Supreme Court, took actions or made decisions which broadened the constitutional significance of our national commitment to equality. Morroe Berger remarks that in the three decades since 1937 the Supreme Court "has been telling the nation, especially the South, that the Negro must be treated in accordance with the professions of equality and justice which underlie the basic law by which we govern ourselves."[2]

Accordingly, this discussion will not dwell unnecessarily on the inequities of the past. On the other hand, attention will be given to events and circumstances which are important to an understanding of the present.

The origin of the quest for equality in America dates back to the time Thomas Jefferson wrote that "all men are created equal." The framers of the Declaration of Independence acknowledged "certain inalienable rights."

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[2]Morroe Berger, Equality by Statute: The Revolution in Civil Rights (Rev. ed.; Garden City, New York: Doubleday and Company, Inc., 1967), p. 147.

Scholars seem to agree that the history of the quest for equality and justice by Negroes and other minorities in America closely parallels the development of our country. These conditions were influenced greatly by the economic, scientific, and political climate of the time.

Historically, the Negro's struggle for equality can be traced back to events long before the Civil War to "the peculiar institution of slavery," a most "outrageous form of human exploitation."[3] One historian remarks, "Men learned that they could gain practical advantages from an unequal distribution of rights and from transgressions upon the liberties of others.[4]

For almost two hundred years, the Negro brought to America in bondage was enslaved by law. Historical facts provide some evidence:

> During this decade [the 1660s], various statutes provided that Negroes were to be slaves for life, that the child was to inherit the condition of the mother. . . . [Years later] statutes [were added] to define clearly the nature of slaves as property, to confer upon the masters the required disciplinary power, to enact the codes by which the slaves' movements were subjected to public control, and to give them a peculiar position in the courts of law. . . . By the eighteenth century color had become not only evidence of slavery but also a badge of degradation. Thus the master class, for its own purposes, wrote chattel slavery, the caste system, and color prejudice into American custom and law.[5]

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[3]Kenneth M. Stampp, The Peculiar Institution: Slavery in the Ante-Bellum South (New York: Alfred A. Knopf, 1956), p. viii.

[4]Stampp, p. 15. [5]Stampp, pp. 22-23.

E. Franklin Frazier suggests that the law reinforced the status of the Negro during the seventeenth century:

> The fact that Negroes were an alien race bearing distinctive physical marks was, doubtless, the basis for differential treatment from the beginning and later facilitated their enslavement. But it was not due solely to difference in race that Negro slavery grew and finally supplanted white servitude. There were powerful economic factors, such as the demand for a cheap labor supply, that decided the fate of the Negro. Court decisions and statutes only gave legal sanction to customary practices or what was becoming an established fact.[6]

During the late eighteenth century, the American revolutionaries expressed their concept of the government and the governed in the Declaration of Independence. It should be noted: "With the ratification of the first ten amendments to the Constitution, in 1791, an American Bill of Rights became part of the law of the land. The Bill of Rights specifies particular rights that the federal government may not violate. In spite of such legal guarantees, however, many groups of Americans have felt obliged to protest on behalf of their own rights."[7] Regarding arguments of this period, John Hope Franklin makes the following observation:

> The real point at issue was twofold: The first was whether slaves should be treated as property or men. If they were men, Gouverneur Morris had said to

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[6]E. Franklin Frazier, The Negro in the United States (Rev. ed.; Toronto: McMillan Company, 1957), p. 22.

[7]Jack R. Fraenkel, The Struggle for Human Rights (New York: Random House, Inc., 1975), p. 16.

> the Constitutional Convention, then make them citizens and let them vote. The view of Virginia's George Mason and his supporters prevailed, however, and the Constitution did nothing to indicate that blacks were equal to others in the enjoyment of their rights.
>
> The second point was whether blacks who were free should be treated as other free persons. In the first fifty years of the nation's history the dominant view was that they should not be. In the South free Negroes were nothing less than pariahs, while in the North they were an oppressed and underprivileged minority. Even if men did not violate the Constitution in maintaining slavery, they clearly violated it in denying full citizenship rights to free blacks.
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> The revolutionary dream of equality of all peoples was deferred by necessity, as the Founding Fathers saw it, of protecting the inviolability of property and maintaining a stable social order. It was also deferred because of the pervasive view that a man not only had to be free, but also white, in order to enjoy equality or even to aspire to it.[8]

During the nineteenth century, slavery appeared beyond the original southern states since the Constitution did not prohibit the same but rather left the matter of slavery up to the discretion of the individual states. Significantly, the Supreme Court decision in the Dred Scott case "gave judicial sanction to the pro-slavery doctrine that the peculiar institution could not be excluded from any of the territories of the United States."[9]

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[8]John Hope Franklin, Racial Equality in America (Chicago: University of Chicago Press, 1976), pp. 34-35.

[9]Stampp, p. 26.

The Civil War, President Lincoln's Emancipation Proclamation, and Civil War Amendments were expected to guarantee equality for Negroes. However, historians note that denial of equality and justice for Negroes continued for many years after the Emancipation Proclamation. For example, Stampp remarks, succinctly: "Racist doctrines did not die with slavery."[10]

Unlike others who came to America seeking freedom the Negro was brought to America to be a servant and eventually became a slave. Slavery existed for more than two hundred years prior to the Civil War and the Emancipation Proclamation. The Reconstruction Era has been called a "crucial period in the Negro's struggle for equality." Writing about "Five Myths of the Reconstruction Era," William S. McFeely comments:

> During this twelve-year period from 1865 to 1877 some former slaves became independent farmers; state conventions in which black men served as active delegates drew up liberal constitutions; black people gained the vote; and colored politicians participated in the governing of the South and the nation as judges, state legislators, congressmen, and senators. The legal base for equality, erected during Reconstruction, remained, although much of what these men helped build upon it was later torn down. The Fourteenth Amendment, in defining the rights of all citizens, brought the word equal into the Constitution, and the Fifteenth [Amendment] forthrightly acknowledged what divided the nation by declaring that no man should be denied

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[10]Stampp, p. 8.

> his vote "on account of race, color, or previous condition of servitude."[11]

In the opinion of many Americans, Reconstruction did not succeed. For example in 1901 W.E.B. DuBois, speaking about Reconstruction, said, "For this much all men know: despite compromise, war, and struggle, the Negro is not free."[12] McFeely adds: "Race can separate us; it does not have to, but at the close of Reconstruction it did. By force in Mississippi and with mocking and frightened prose from Maine, black people were forced to live in a second and shadowed land. America said no to the equality that black Americans and some white Americans, as well, wanted and worked to achieve."[13]

The late nineteenth century represents a period of disappointment and defeat in the Negro's quest for equal rights. In large part, Supreme Court actions appear to have contributed to these circumstances. For example, it has been noted:

> During the last three decades of the nineteenth century, the United States Supreme Court, responding to the temper of the times, made a series of decisions adverse to Negro rights--decisions that helped reconcile North and South at the expense of the Negro. For instance, in Plessy v. Ferguson (1896), the Court established the separate but equal doctrine and two years later, in Williams v. Mississippi, it

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[11]William S. McFeely, "The Hidden Freedman: Five Myths in the Reconstruction Era," The Black Experience in America, eds. James C. Curtis and Lewis L. Gould (Austin: University of Texas Press, 1970), p. 69.

[12]McFeely, p. 70. [13]McFeely, p. 86.

> approved the Mississippi plan for depriving Negroes of the franchise. Added to the court-approved legislation that deprived Negroes of rights and freedom was the widespread use of extralegal coercion to keep the Negro "in his place."[14]

While the case of Plessy v. Ferguson [a landmark constitutional decision of this period] pertained only to segregation in railroad coaches, its effect extended through many areas and gave legal sanction and impetus to Jim Crow legislation adopted in all southern and some northern states.[15]

It would indeed be harsh to blame Reconstruction or the abandonment of related efforts or any single occurrence for the legacy of racial problems confronting America at the turn of the century and even later into the twentieth century. In 1944 Gunnar Myrdal, a Swedish economist, examined the status of the Negro in the United States in a book entitled An American Dilemna. He perceived this dilemna as a basic conflict between the abiding faith of white Americans in their creed of liberty and justice for all and the positive knowledge that they were denying this democratic heritage to the Negro.[16] Writing The Negro in American Life, Rayford Logan comments about how American

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[14]Leonard Broom and Norval D. Glenn, Transformation of the Negro American (New York: Harper and Row, Publishers, 1965), p. 6.

[15]Lerone Bennett, Before the Mayflower: A History of the Negro in America 1619-1964 (Rev. ed.; Chicago: Johnson Publishing Company, Inc., 1964), pp. 232-233.

[16]Gunnar Myrdal, An American Dilemna (New York: Harper and Brothers, Publishers, 1944), pp. 88-89.

ideals and government at the beginning of the twentieth century detained equal rights for Negroes: "Both major parties had decided that American principles of justice, liberty and democracy did not have to be applied alike to white men and to Negroes. The United States had emerged as a 'world power,' but at home it was faithless to its own basic principles as far as nine million black citizens were concerned."[17] In general, by 1900 the white supremacy doctrine of the South did not meet any significant disapproval and the political and economic life of the American Negro was adversely affected by the conditions that persisted. For instance, Benjamin Quarels describes the years following Reconstruction as "the decades of disappointment." Quarles adds: "Increasingly there had been a merging of the southern and the national image of the Negro. . . . The idea that certain races were naturally inferior became more tenaciously held than ever. The belief that the Anglo-Saxons were superior to other races waxed in the 1890's."[18] Continuing Quarels notes that "politically . . . the experiences of Reconstruction led the Negro to look to the national government rather than to the states for protection." In

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[17]Raymond Logan, The Negro in American Life and Thought: The Nadir 1877-1901 (New York: The Dial Press, Inc., 1954), p. 96.

[18]Benjamin Quarels, The Negro in the Making of America (New York: The Macmillan Company, 1964), p. 148.

particular, Negroes residing in the South were denied the right to take part in politics by "local self-government."[19]

Role of the National Association for the Advancement of Colored People

The early years of the twentieth century represented an era of rigorous struggle for the working class and particularly for Negroes. During this period, it seems that monopoly capital was pursuing its ruthless course, seizing the natural wealth of the country, rapidly expanding the industrial system, reaping unprecedented profits, and submitting the workers of the field and factory to ever sharper exploitation. Accordingly, Negroes seemed to have "suffered the most in these years of deprivation, oppression, and struggle." For instance, one source reports:

> The Negro people suffered from the most acute forms of exploitation and terror. They were shamelessly robbed as sharecroppers; they were stripped of the right to vote; they were systematically insulted by Jim Crow; they were barred from industry, and when they did get jobs they had to work for half of what a white man got in the North for similar work; they were crowded into filthy ghettos; they were thrown into jails and onto the medieval chain gangs by the thousands for the most trivial offenses, real or imaginary. And over their whole life hung the constant menace of sudden, brutal death from their oppressors.[20]

There was evidence of widespread savagery during these years at the hands of ordinary white persons. But more

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[19]Quarels, p. 149.

[20]William Z. Foster, The Negro People in American History (New York: International Publishers, 1954), pp. 419-420.

significantly, documentation exists that persons in charge of law enforcement endorsed or participated in these brutalities. For example, it has been reported:

> Between 1900 and 1914 there were recorded no less than 1079 Negroes brutally murdered by armed mobs. They were hanged, burned, shot, slashed to pieces and dragged to death behind automobiles. No ferocity was too terrible. . . . Men, women, and children met this terrible fate, usually upon the slightest pretext. Of course, no lynchers were ever punished for their terrible deeds. The lynchings were usually carried out with the full knowledge and consent, and sometimes with the actual participation, of the local authorities.

Further, it is revealed that a greater number of Negroes were murdered by individual southerners than by lynchings and pogroms; i.e., "armed white men, sure of immunity from prosecution, shoot down unarmed Negroes for even the slightest offense to their tender white supremacist susceptibilities."[21]

Also, at the turn of the century the Negro resided in an American society that "casually and unquestioningly accepted the concept of Negro inferiority." Other characteristics of the American society at this time include:

> A white society that could so totally and cavalierly reject the rights of nine million black citizens was able to employ forceful repression at will. Negroes were victimized in the race riots of 1898 in Wilmington, North Carolina, of 1900 in New York City, and of 1906 in Atlanta. These brutalities were repeated in the Springfield, Illinois, race riot of 1908, the East St. Louis, Illinois, riot of 1917,

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[21]Foster, pp. 420-421.

> and the wanton destruction of Negro life and property in two dozen cities in 1919.[22]

Historians agree that these so-called "race riots" were "in actuality . . . deliberately planned, organized attacks against the Negro people by armed white thugs in the service of the planter-monopolist [group]."[23]

In short, the status of equal rights for American Negroes reached its lowest and most depressed point in the early years of the twentieth century. According to one historian, "The last decade of the nineteenth century and the opening of the twentieth century marked the nadir of the Negro's status in American society."[24]

These dramatic and violent conditions coupled with indifference and insensitivity on the part of local, state, and federal governments probably served as sufficient motivation for Negroes to conclude that they must determine new methods to solve the problems of inequality and injustice. In all likelihood, these circumstances led to the assembly of Negroes in 1905 for the Niagara Conference [a forerunner of the NAACP]. The purpose of Niagara Conference or Movement was "to organize for determined and aggressive action in

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[22]Robert L. Zangrando, "The 'Organized Negro,'" The Black Experience in America, eds. James C. Curtis and Lewis L. Gould (Austin: University of Texas, 1970), pp. 146-147.

[23]Foster, p. 420.

[24]Logan, p. 52.

in order to secure full citizenship."[25] Significantly, it has been observed:

> In face of such repression and brutality the American Negro was almost defendless. Stripped of his political and civil rights, he had no ready means to effect redress; confronted with segregated, inferior educational facilities at all levels and with discriminatory employment, he lacked much of the broad knowledge and financial resources necessary to mobilize an effective attack upon racial injustices. What he desperately needed was a national organization sufficiently powerful to call into play the most concerned and alert interests within the black and white communities and marshall these talents and resources to achieve reform.[26]

Accordingly, the National Association for the Advancement of Colored People (NAACP) was organized in 1809 with the following original purpose: "To uplift the Negro men and women of this country by securing for them the complete enjoyment of their rights as citizens, justice in the courts, and equal opportunity in every economic, social, and political endeavor in the United States."[27] The NAACP's Annual Report of 1912 announced the organization's "programmatic objectives that included an assault upon lynching, disfranchisement, educational inequality, discrimination in public accommodations, and racial employment inequities."[28]

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[25]John Hope Franklin, From Slavery to Freedom: A A History of Negro Americans (3d ed.; New York: Alfred A. Knopf, 1967), p. 445.

[26]Zangrando, p. 147.

[27]R. L. Jack, History of the National Association for the Advancement of Colored People (Boston: Meador Publishing Company, 1943), p. 7.

[28]Zangrando, p. 149.

At this moment in the history of the nation, the NAACP seems to have assumed leadership in the struggle for equality and justice. Commenting on the role and the strategy of the NAACP, one source noted:

> From the outset, the NAACP sought to effect change by educating the public and its politicians to the need for and wisdom of reform, by lobbying for corrective legislation, by securing favorable court decisions, and by shaping a nationwide organization through which the black man, with interested white persons, could work for fundamental reforms. In so doing, the NAACP became and remained the major voice of the Negro protest movement down to the late 1950's.[29]

In the 1930s the NAACP was able to accelerate and enhance the effectiveness of its legal drive to secure equal rights for American Negroes. Some of the significant factors contributing to the new thrust is explained, in part, by Loren Miller:

> The National Association for the Advancement of Colored People has reached the age of majority. The NAACP was 21 years old in 1930, under the able and clever leadership of Walter White, a master salesman of equality cast in the mold of Madison Avenue. The urban Negro middle class was solidly enlisted under its banner and its influence had reached down into the ranks of the more privileged workmen. Negro newspapers, now widely read, rallied their readers behind the NAACP program, and the organization had branches in every important city and town in the nation.
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> In 1930, the NAACP made a historic decision, hardly noticed at the time. It decided to launch a "large scale, widespread, dramatic campaign to give the Southern Negro his constitutional rights, his political and civil equality . . . and to give the Negroes equal rights in the public schools, in the voting booths, on the railroads

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[29]Zangrando, p. 150.

> and on juries in every state where they are at present denied them, and the right to own and occupy real property." There was nothing new in those objectives. What was new and very important was the decision to use the courts to achieve the objectives and to put major emphasis on planned and orderly litigation.[30]

Another pertinent factor was the receipt of a sizable amount of money received from Charles Garland who had rejected an inheritance of more than a million dollars. These funds enabled the NAACP to plan a coordinated legal campaign and to employ a special counsel.[31] It has been noted by one writer:

> The NAACP hired Charles Hamilton Houston, a brilliant, tough-minded young graduate of Amherst and Harvard University. Houston had a vision. Negro lawyers, he felt, should be "social engineers." As vice dean of the Howard University Law School he had attempted to make Howard the "West Point of Negro leadership." He had encouraged brilliant teachers like William Henry Hastie and promising students like Thurgood Marshall. Now, as a special counsel of the NAACP, he planned a hedge-hopping campaign. Starting with the "soft underbelly" of Jim Crow--graduate schools--he planned to take case after case to the Supreme Court.
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> And so it began. The first case--filed on March 15, 1933, against the University of North Carolina--was lost on a technicality. In 1935, however, Thurgood Marshall persuaded the Maryland Court of Appeals to order the state university to admit Donald Murray. The next year--on December 8, in Montgomery County, Maryland--the NAACP began its long and generally successful campaign to equalize teachers' salaries.

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[30]Loren Miller, The Petitioners: The Story of the Supreme Court of the United States and the Negro (New York: The World Publishers Company, 1966), p. 258.

[31]Bennett, p. 302.

> Throughout the thirties, NAACP lawyers--Marshall, Houston, Hastie and others--leapfrogged across the country, arguing the subtleties of the Fourteenth Amendment. They won a great many cases, but they didn't get rid of Jim Crow. After losing a case, a state would simply set up an inferior law or journalism school at the Negro state college. One day in 1945, Houston's successor and protégé, Thurgood Marshall, decided that the time had come to "go for the whole hog."[32]

It is probably meaningful at this point to mention that the determination of the NAACP to utilize the courts proficiently in its intensified crusade for equality was not a fanciful one. Noting the necessity of this plan, Miller remarks:

> The program was national in scope and purpose, and Congress was so thoroughly dominated by southern Democrats through the seniority system for committee chairmanships in both houses and the filibuster privilege in the Senate that there was no hope for passage of civil rights legislation. A democratic chief executive could, or would, undertake only a minimum of racial reforms, in the light of the political necessity of keeping southern Democrats pacified and willing participants in the delicately balanced South-Labor-Negro political alliance upon which his power rested. Republican presidents were so beguiled with the hope of breaking the Solid South that they, too, were unwilling to favor the Negro's demands. There was no place to go except to the courts.[33]

It is generally believed that "the Court by process of interpretation could restore the Thirteenth, Fourteenth and Fifteenth Amendments to their pristine glory and thus strike off the shackles of second-class citizenship."[34]

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[32]Bennett, p. 303. [33]Miller, p. 259.

[34]Miller, p. 260.

Some of the early legal victories of the NAACP addressed inequities in voting, housing, and criminal justice. To combat voting problems, for example, in Guinn v. United States (1915), an NAACP lawyer argued that the "Grandfather Clause" in state constitutions violated the Fifteenth Amendment. Subsequently, the Supreme Court "declared the grandfather clauses in the Maryland and Oklahoma constitutions to be repugnant to the Fifteenth Amendment and therefore null and void."[35] Another example dealt with the denial of the right of a Negro resident of El Paso, Texas, to participate in a Democratic Party election. In Nixon v. Herndon, NAACP lawyers failed to win favorable decisions in lower courts but won appeal to the Supreme Court. The Supreme Court ruled that the "white primary" law was invalid and violated the "equal protection" clause of the Fourteenth Amendment.[36]

Similarly, the NAACP experienced success in litigation regarding racial discrimination in housing. In the case of Buchanan v. Waverly (1917), the Supreme Court declared unconstitutional the Louisville, Kentucky, ordinance "because it interfered with the rights of an owner to dispose of his property." Also, the NAACP addressed the matter of protecting people accused of crime. What has been

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[35]Franklin, From Slavery to Freedom, p. 447.

[36]Randall W. Bland, Private Pressure on Public Law: The Legal Career of Justice Thurgood Marshall (Port Washington, New York: Kennikat Press, 1973), p. 15.

described as "a notorious example of injustice emanating from mob action" took place in Elaine, Arkansas. This case Moore v. Dempsey (1923) was taken to the Supreme Court by the NAACP legal staff. Following arguments, including one that defendant did not receive a fair trial because Negroes were excluded from juries, the Supreme Court ordered a new trial. In fact, speaking for the majority, Justice Holmes stated that the previous trial had been "held in a hostile atmosphere of fear and hate, was inherently unfair and resulted in a denial of due process of law as protected by the Fourteenth Amendment."[37]

It seems desirable that the remaining discussion of the NAACP's legal campaign should point out cases litigated, in general, emphasizing those argued by Thurgood Marshall.

Marshall, an Assistant Special Counsel of the NAACP and later as Special Counsel and Director-Counsel of the NAACP legal staff, participated actively in the NAACP's campaign to gain equality and justice. A few examples suggest Marshall's involvement. The initial brief prepared by Marshall as a new Assistant Special Counsel was "of great importance to the legal arm of the NAACP because it was employed in the first case involving education brought before the Supreme Court by the Association." In Missouri ex rel. Gaines v. Canada (1938), the NAACP's lawyers relied on Marshall's brief, basing their argument solely on section

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[37]Bland, pp. 16-17.

one of the Fourteenth Amendment which forbids a state to "deny to any person within its jurisdiction the equal protection of the laws." Randall Bland notes:

> Since Missouri had no separate and equal law school for the Negroes of its community, and having admitted that Gaines was otherwise eligible for admission, acceptance was requisite by the force of the Constitution. . . . On December 12, 1938, the Court held that Gaines must be allowed to attend the Law School of the state in the absence of a comparable Negro institution. In a 7-2 decision . . . [the Court] nullified Missouri's out-of-state plan.[38]

In keeping with the plans to intensify its legal campaign, the NAACP Legal Defense and Educational Fund was established on October 11, 1939. The following purposes were cited in the charter: "To render free legal aid to Negroes who suffer legal injustice because of their race or color and cannot afford to employ legal assistance; To seek and promote educational opportunities denied to Negroes because of their race or color; To conduct research and publish information on educational facilities and inequalities furnished for Negroes out of public funds and on the status of the Negro in American life."[39]

Parenthetically, it probably should be added that the charter also stipulated that the Fund's activities as distinguished from those of the NAACP would not directly exert pressure or lobby to influence legislation. On the other hand, evidence supports the fact that "the Fund

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[38]Bland, pp. 21-22. [39]Bland, p. 23.

lawyers fully intended to use the courts as a 'forum for the purpose of educating the public' on any form of discrimination." For example, one source observes that, while addressing discrimination in housing, Marshall asserted that "the only method of counteracting this vicious practice is by means of educating the general public, from which juries are chosen, to the plight of the Negro." Thus, it seems that the Fund's activities might indirectly contribute to improved legislative actions through the responses of "an aroused and informed public."[40]

In 1940, Thurgood Marshall was selected for the newly created position of Director-Counsel, "the top legal officer of the Legal Defense and Educational Fund." In this position, he assumed the responsibility for "planning the strategy to be used in the courts and for coordinating the entire legal program." He explained his duties as Director-Counsel as follows: "The board charges me with the responsibility of keeping the work within the policy adopted by the board moving along, with general supervisory powers over the staff [six full-time lawyers who lived in New York but who could be assigned to places in other states] and the other people working for us."[41]

Many sources comment on the effectiveness of Marshall and his staff, which yielded significant progress

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[40]Ibid. [41]Bland, p. 24.

in the NAACP's pursuit of equality. For example, one source reveals:

> Marshall served in this capacity for twenty-one years. Most major cases in the field of civil rights were handled by the Fund during this period, and the Director-Counsel was to a large degree responsible for its successes and failures. . . . Marshall argued thirty-two cases and assisted in preparing the briefs in eleven others brought before the Court. . . . Of the cases he argued, four were lost, one was dismissed for lack of a substantial federal question, and twenty-seven were substantive victories.[42]

Perhaps a few of the notable cases handled by Marshall and his staff should be included, since the outcome relieved some of the inequality and injustice plaguing Negro Americans. For instance, in the area of political rights, history records the fact that as late as the 1940s many states denied Negroes the right to serve on juries. Gunnar Myrdal notes the following: "In numerous cases the exclusion of Negroes from grand and petit juries has been challenged by NAACP lawyers, and the Association shares in establishing precedents by which the principle is now firmly established that the exclusion of Negroes from jury service is a denial of equal protection of laws guaranteed by the Fourteenth Amendment to the Constitution."[43] More specifically, in The Lonesome Road, Saunders Redding writes: "But that right [of Negroes to serve on juries] had to be

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[42]Ibid. [43]Myrdal, pp. 828-829.

protected time after time in state after state until at last, in 1943, Marshall won certification of it from a Supreme Court decision that held the exclusion of Negroes from jury rolls in violation of the due-process clause, and therefore unconstitutional."[44]

In the area of securing voting rights, the Smith v. Allwright (1944) case provides an excellent example. Concerning the Smith case Paul G. Kauper in Civil Rights and the Constitution writes:

> Smith v. Allwright [case] . . . must be regarded as a very significant one, not only in terms of a dilution of the state action restriction, but also in terms of the effective protection of the Negro's right to vote. Here the Supreme Court held that Negroes could not lawfully be excluded from participation in the Democratic primary in the State of Texas. In prior cases the Court had held that if exclusion occurred as a result of state law or as a result of grant of authority by state law to the executive committee of the party, this was exclusion by action of state law and was invalid under the Fourteenth and Fifteenth Amendments [e.g., Nixon v. Herndon, 1924 and Nixon v. Condon, 1932]. On the other hand, the Court held that the exclusion of Negroes occurred as a result of action by the state convention, this was a private action that was not governed by these constitutional restrictions [e.g., Grovey v. Townsend, 1935]. In Smith v. Allwright, however, the Court rejected all these distinctions and found that because of the significance of the party primary in the total election process, a process for which the state had to assume total responsibility, the party's action could no longer be characterized as private action. A later decision involving the so-called Jaybird party in Texas pushed the idea still further in finding that a party caucus preceding a primary also was subject to the constitutional rule of

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[44]Redding, p. 324.

> nondiscrimination [e.g., Terry v. Adams, 1953]. Similar decisions elsewhere emphasize the idea that, apart from any consideration whether the primary is conclusive in determining the final result, the necessary interrelationship between the primary and the election and the integration of the primary with a public aspect that brings constitutional limitations into play.[45]

This broad concept of state action has served a most important function as part of the total movement for securing equal rights for Negroes.

Marshall and W. J. Durham of Sherman, Texas, "were primarily responsible for writing the brief" and they argued the landmark case of Smith v. Allwright before the Supreme Court. Among other points, the brief emphasized: "The Constitution and laws of the United States as construed by the United States v. Classic prohibit interference by respondents with petitioner's right to vote in Texas Democratic primaries." Subsequently, the Court's decision with only one dissenting vote, "completely embraced the argument made by the Legal Defense Lawyers." Regarding the decision in Smith, Justice Stanley noted:

> When primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election. If the state requires a certain electoral procedure, prescribes a general election ballot made up of party nominees so chosen and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names appear on such a ballot, it endorses, adopts and

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[45]Paul G. Kauper, Civil Liberties and the Constitution (Ann Arbor: The University of Michigan Press, 1962), pp. 160-161.

> enforces the discrimination against Negroes, practiced by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment.[46]

Also, to ensure equal rights in the political processes NAACP lawyers, including Thurgood Marshall, argued the Rice v. Elmore case. It probably should be mentioned that "in a 1947 class-action case, George Elmore sought injunctive relief to enjoin Clay Rice and other election officials in South Carolina from denying to Negro electors the right to vote in the Democratic Primary." Again the NAACP lawyers were successful since the decision handed down by the federal district court in 1948 said, in part: "When this country is taking the lead in maintaining the democratic process and attempting to show to the world that the American government and the American way of life is the fairest and the best . . . it is time for South Carolina to rejoin the Union. . . . Racial distinctions cannot exist in the machinery that selects the officers and lawmakers of the United States." Following an appeal to Fourth Circuit Court in the Rice case, the decision of the district court was reaffirmed, in part, as follows:

> An essential feature of our form of government is the right of the citizen to participate in the governmental process. The political philosophy of the Declaration of Independence is that governments derive their just powers from the consent of the

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[46]Bland, pp. 31-32.

> governed. . . . The disfranchised can never speak with the same force as those who are able to vote . . . there can be no question that such denial amounts to a denial of the constitutional rights of the Negro and we think it is equally clear that those who participate in the denial are exercising state power to that end, since the primary is used in connection with the general election in the selection of state officers.

Ultimately, "Rice petitioned for a grant of certiorari from the Supreme Court," but "the Court denied certiorari, thus in effect upholding the prior decisions of the lower federal courts."[47]

The area of interstate transportation was another area which NAACP lawyers addressed in the pursuit of equal rights for Negroes. Reportedly, Thurgood Marshall brought Morgan v. Virginia before the Supreme Court in 1946, in "the first case involving segregation in interstate transportation presented by the NAACP before the Supreme Court of the United States."[48] The Court's favorable decision probably best confirms the effectiveness of arguments and evidence Marshall presented. In this connection it has been noted that in a 7-1 decision "the Court agreed with both the sense and the point of Marshall's argument." Additionally, the opinion of the Court stated:

> As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it

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[47]Bland, p. 45. [48]Bland, p. 40.

> interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid.[49]

Perhaps one of the stickiest areas that demanded the attention of NAACP lawyers dealt with equality in the housing for all Americans. In the forties "the only case planned solely by the Legal Defense and Educational Fund was McGhee v. Sipes." Commenting on Marshall's strategy in the McGhee case, Randall Bland stated:

> In addition to showing the social and economic evils resulting from state enforcement of racial contracts in this class-action case, Marshall opted for two other tactics in this case: First, to demonstrate legally . . . that enforcement of restrictive agreements by state courts was clearly state action and, as such, violated "equal protection of the laws" protected by the Fourteenth Amendment; and second, to make apparent to the Court the widespread support for the Negro cause by having a large number of interested groups file amicus curiae briefs, and by focusing attention on the problem in journals and law review studies.[50]

Two cases--Shelley v. Kraemer and McGhee v. Sipes (1948)--afford suitable instances. Presenting the Shelley case, the NAACP was aided by the Department of Justice, the National Lawyers League Guild, the Civil Rights Department of the Grand Lodge of Elks, among others. The Supreme Court "made constitutional history" accordingly: "With three justices not participating, a unanimous court . . . ruled

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[49]Bland, p. 43. [50]Bland, p. 52.

that judicial enforcement of restrictive covenants designed to exclude persons as inhabitants of residential areas on the basis of race or color is state action and, as such, a denial of equal protection."[51] The Court's decision in the McGhee case was similar since the Court held that "the enforcement of such a covenant by state courts was a violation of 'equal protection of the laws' under the Fourteenth Amendment."[52]

Addressing the Annual NAACP Conference on June 23, 1948, Marshall's topic was "Restrictive Covenants and the Segregation Picture." Referring to a 1948 Supreme Court decision regarding discrimination in housing, he quotes from the ruling: "Freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners they have been denied rights or ownership or occupancy enjoyed as a matter of course by other citizens of different race or color." Continuing in the same address, Marshall evaluates the success of litigation and the impact of the Court's decision while asserting the necessity for preservation of this venture and the

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[51]Robert J. Harris, The Quest for Equality: The Constitution, Congress, and the Supreme Court (Baton Rouge: Louisiana State University Press, 1960), p. 116.

[52]Bland, p. 57.

accelerated of other efforts to secure equality in housing: "This statement sums up a big victory in a long fight against segregated housing. It did not and will not destroy segregated housing. It is our job to protect the effect of this decision and to push forward the total destruction of not only segregation in housing, but all forms of segregation in American life."[53]

Writing about the legal career of Thurgood Marshall, Randall Bland summarizes the endeavors of the NAACP's Legal Defense and Educational Fund from 1945 to 1955 as follows:

> During this period the legal arm of the NAACP, under Marshall's direction, extracted from the federal courts in general--and the Supreme Court in particular--a number of decisions with great constitutional importance, especially in the field of education. Although the Legal Defense Fund made considerable gains by having nullified discrimination in transportation, exclusion from primary elections, state enforcement of restrictive covenants, and segregation of tax-supported recreation facilities, its greatest victory came with the tearing down of the wall of segregation in public schools. Beginning with Sipuel v. University of Oklahoma (332 U.S. 631 (1948), and ending with Brown v. Board of Education (349 U.S. 294 (1955), the legal staff of the NAACP brought eighteen education cases before the Supreme Court. Eventually, they found the Court willing, not only to end segregation in state colleges and upper-level institutions, but to declare the "separate but equal" concept unconstitutional in elementary education as well.[54]

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[53]Thurgood Marshall, "Restrictive Covenants and the Segregation Picture" (Address before the thirty-ninth annual conference of the National Association for the Advancement of Colored People, Kansas City, Missouri, June 23, 1948), p. 1.

[54]Bland, p. 57.

It seems desirable to discuss several important cases dealing with securing equality in education which Marshall and his staff argued successfully before the Supreme Court. Perhaps, of significance are three cases--Brown v. Board of Education (1954), Bolling v. Sharpe (1954), and Brown v. Board of Education (1955)--for two reasons: first, they culminated a decade of litigation involving numerous cases; and second, the Court's historic decisions represented an era in constitutional law which seemed to pave the way for progress toward making the goal of equality for all Americans a reality. Regarding the Brown decision, Alan P. Grimes remarks: "Not since the Dred Scott case of nearly a century before had any Supreme Court case held such a momentous import for the future of American Negroes."[55] He adds: With the destruction of the doctrine of 'separate but equal' in Brown v. Board of Education, a milestone was passed in American constitutional history."[56] Also, Jack Greenberg makes the following comment concerning School Segregation cases:

> The best-known constitutional prescript of this generation is that of Brown v. Board of Education (1954) which, resting on the Fourteenth Amendment's equal protection clause, held "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Less

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[55]Alan P. Grimes, Equality in America (New York: Oxford University Press, 1964), p. 75.

[56]Grimes, p. 77.

> publicized but of wider legal import are the companion words of Bolling v. Sharpe (1954), the District of Columbia School Segregation decision, which involved the Fifth Amendment's due process clause. It said: "Liberty under the law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective."[57]

Reliable sources frequently assert that the Supreme Court decisions which guaranteed equal rights for Negroes in many aspects of American life met vigorous opposition in some quarters. It seems that southern states, in particular, devised schemes to delay enforcement of laws related to school desegregation. Although opposition was not always successful, it did seem to retard the advancement of equality for Negroes. Consequently, the Supreme Court in Brown v. Board of Education (1955) directed district courts to "take such proceedings and enter such orders and decrees . . . as are necessary" to ensure that Negro children were admitted to public schools on a racially nondiscriminatory basis with all deliberate speed. The principle features of the Court's opinion provided:

> All provisions of federal, state, or local law must yield to this (holding of the School Cases) principle.
>
> Full implementation of these constitutional principles may require solution of varied local school problems.
>
> . . . the courts will require that the defendants make a prompt and reasonable start

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[57]Jack Greenberg, Race Relations and American Law (New York: Columbia University Press, 1959), pp. 213-214.

> toward compliance with our May 17, 1954, ruling.
>
> Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner.
>
> The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.

Continuing, the Court stated that "it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."[58] Although the remedy offered by the Court differed from that presented by the NAACP, Marshall expressed some optimism:

> The decision was a good one. The Court has reaffirmed its pronouncement that segregation is unconstitutional and throughout the opinion stress is placed upon the necessity for full compliance at the earliest practicable date. Delays may be occasioned by various devices. This would result in any case. We can be sure that desegregation will take place throughout the United States--tomorrow in some places, the day after in others and many, many moons hence in some, but it will come eventually to all. We look upon the . . . decision as a ticket which is now available to every parent and child who need it and want to use it.[59]

According to most sources, turbulent years followed the Supreme Court's 1955 decision in the Brown case. In fact numerous southern states implemented "massive resistance . . . intended to thwart the force of the Court's desegregation decision." For example, Bland notes: "These included statutes allowing local school boards to rearrange students among various districts in order to maintain

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[58]Greenburg, p. 215. [59]Bland, p. 86.

segregated facilities; repealing laws requiring compulsory attendance, thus inviting parents to withdraw their children from integrated schools; laws providing for state-supported segregated private schools; acts permitting the withdrawal of state funds from any school system that complied with the desegregation decree; and state laws threatening the direct closing of public schools if integration became inevitable."[60]

In the face of these circumstances and other maneuvers to maintain the status quo, "between 1956 and 1961 the NAACP [lawyers] . . . countered Southern resistance with no less massive program of litigation in order to force an end to segregated public schools." Regarding the sustained and widespread reluctance in the South and side effects of litigation, it has been noted: "As late as 1958 . . . the Southern School News reported that four years after the School Segregation Cases in the seventeen Southern and border states, elimination of de jure segregation had begun or been completed in only 764 of 2,889 school districts; none of the school districts in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Virginia has, as yet, complied with the law. The litigation that ensued often brought with it racial turmoil, rioting, and open hostility that necessitated the

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[60]Bland, p. 99.

intervention of local and state forces and on occasion even the federal government."[61]

Importantly, the period from 1955-1960 represents Marshall's final years with the NAACP. Litigation by NAACP lawyers during this period continued to address school segregation problems in general and resistance to the Brown decision in particular. R. W. Bland writes: "In the first five years following the second Brown decision (1955) Marshall and his colleagues brought seven major cases before the Supreme Court of the United States; they were Lucy v. Adams, 350 U.S. 1 (1955); Florida ex rel. Hawkins v. Board of Control, 350 U.S. 413 (1956); Frasier v. University of North Carolina, 355 U.S. 838 (1957); Cooper v. Aaron, 358 U.S. 1 (1958); Faubus v. Aaron, 361 U.S. 197 (1959); and Bush v. Orleans Parish Schools, 364 U.S. 500 (1960)."[62]

Commenting on resistance to the Brown decisions, Benjamin Quarels remarks: "Among the resistance techniques was that of closing public schools and replacing them with 'private' segregated schools. The most headlined of the school-closing incidents came in Little Rock, Arkansas, where the public schools remained shut during the entire term 1957-58. In Prince Edward County, Virginia, the public schools closed in 1959, although private schools for white children were operated with the support of state

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[61]Bland, pp. 99-100. [62]Bland, p. 100.

funds."[63] One of the cases--Cooper v. Aaron--presented by the NAACP provides another illustration: The [Little Rock] School Board and the Superintendent of Schools filed a petition . . . seeking a postponement of the program for desegregation. Their position in essence was that because of public hostility, which they stated had been engendered largely by the official attitudes and actions of the Governor and the Legislature, maintenance of a sound educational program at Central High School, with the Negro students in attendance, would be impossible." Consequently, "the Board . . . proposed that the Negro students already admitted to the school be withdrawn and sent to segregated schools, and that all further steps to carry out the Board's desegregation program be postponed for a period later suggested by the Board to be two and one-half years."[64] The response of the Supreme Court essentially affirmed the judgment of Court of Appeals which reversed the District Court's decision to grant the relief requested. Regarding the Cooper case, it has been noted:

> The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some forty-one years ago in a unanimous opinion in a case involving another aspect of racial segregation: "It is urged that this

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[63] Quarels, p. 240.

[64] David Fellman, The Supreme Court and Education (3d ed.; New York: Teachers College Press, 1976), p. 149.

> proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights.[65]

Further, the Court held: "In short, the constitutional rights of children not to be discriminated against in school admission on the grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'"[66] Also, it seems pertinent that the Court reacted emphatically to the activities of the governor and the legislature while unanimously reaffirming the Brown decision. Accordingly, it has been noted:

> No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. CHIEF JUSTICE [JOHN] MARSHALL spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery. . . ." A Governor who asserts a power to nullify a federal court order is similarly restrained. If he had such power, . . . "it is manifest that the fiat of state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal

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[65]Fellman, p. 151. [66]Fellman, p. 152.

> Constitution upon the exercise of state power would be but impotent phrases."
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> It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law. . . . The basic decision in Brown . . . is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional idea of equal justice under law is thus made a living truth.[67]

The preceding examples do not pretend to include every significant accomplishment of the NAACP legal staff. However, they do seem to substantiate the vigorous and victorious nature of the NAACP's legal efforts to fulfill its lofty goals toward first-class citizenship for Negro Americans. Speaking generally about the NAACP's efforts to end racial inequality, Bland noted:

> Marshall and his fellow lawyers employed a line of argument that was to be used in every other education case by the NAACP down to the Brown case itself; that is, that the doctrine of separate

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[67]Fellman, pp. 153-155.

> but equal was without legal foundation or social justification: "Classifications and distinctions based on race or color have no legal validity in our society. They are contrary to our Constitution and laws, and this Court has struck down statutes, ordinances of official policies seeking to establish such classification. In decisions concerning intrastate transportation and public education, however, this court appears to have adopted a different and antithetical constitutional doctrine under which racial segregation is deemed permissible when equality is afforded. An examination of these decisions will recall that the 'separate but equal' doctrine is at best a bare constitutional hypothesis postulated in the absence of facts showing the circumstances and consequences of racial segregation and based upon a fallacious evaluation of the purpose and meaning inherent in any policy or theory of enforced racial separation."[68]

Role of the Congress of the United States

Prior to the mid-twentieth century the social and political climate in America endorsed white supremacy by legal and illegal means. Thus the Negro, who had been enslaved by law and emancipated by law, experienced oppression, injustice and little hope of advancement toward goals of complete equality.

Since state and local governments consistently appear to have neglected endeavors to perpetuate equal rights for black Americans, the responsibility for recognizing and remedying problems related to equal rights seemed to rest with the federal government. Nevertheless, during the early years of the twentieth century, most sources

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[68] Bland, pp. 62-63.

report that little was done by the three branches of the federal government to ensure equal rights for Negroes. In fact, evidence substantiates the fact that with few exceptions, legal sanction of segregation continued for almost thirty years into this century. Moreover, many scholars seem to agree that for political reasons Congress has responded least effectively and has been the least helpful in aiding the cause of equal justice for all Americans.[69] Of some significance is the remark about the attitude of the federal government for the first quarter of the twentieth century made by one historian: "What is now called second-class citizenship for Negroes was accepted by presidents, the Supreme Court, [and] Congress."[70] Moreover, in the prior century, Frederick Douglas had queried whether "American justice, American liberty, American civilization, American law, and American Christianity could be made to include and protect alike and forever all American citizens in the rights which have been guaranteed to them by the organic and fundamental laws of the land."[71] For several decades into this century, many Americans felt the question equally pertinent.

The attitude and action by Congress during this period, along with the accompanying outcome, seem significant. The legislative organ of government was inactive.

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[69]Kauper, p. 206. [70]Logan, pp. ix-x.

[71]Logan, pp. 3-4.

It was insensitive and indifferent to minority needs. Since the rights of minorities are logically referable in large measure to constitutional protections, it is not surprising to find increasing resort to the Supreme Court for their vindication. Scholars contend that Congress "too often shunted" these matters to the Court. Also, they agree that the net effect was to make the Supreme Court, and not Congress, the major organ for enforcement of the Fourteenth Amendment, contrary to the expectations of its framers and the meaning of its text.[72]

Many sources reveal that the United States Congress has authority and power, not only to protect and to enforce constitutional guarantees in the area of civil rights, but also to create "new patterns and methods for solving integration problems." Our American system of government empowers Congress with viable and extensive resources to address problems related to equality and justice. Paul G. Kauper acknowledges the reluctance and subsequently the limited response by Congress to overwhelming civil rights problems. On the other hand, Kauper asserts the extraordinary potentiality for substantial legislative response since Congress has been endowed with the most abundant supply of powers which, if utilized fully, could yield significant advancement in the area of civil rights.

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[72]Martin M. Shapiro, The Supreme Court and Constitutional Rights (Atlanta: Scott, Foresman and Company, 1967), p. 140.

Kauper comments:

> For over three quarters of a century Congress did nothing in the civil rights field. By enactment of the 1957 and 1960 Civil Rights Acts it made important contributions to the practical implementation of the right to vote. Important other tasks remain to be done. The general body of civil rights legislation going back to the Reconstruction period cries out for badly needed revision and modernization. The problems raised by resistance to the Supreme Court's school desegregation decree and the slow movement toward integration in a number of the states make it clear also that Congress should use the powers available to it both for encouraging states to comply with the decree and for strengthening the hand of the judiciary and the executive department in dealing with the problem. Moreover, Congress has a larger reservoir of substantive legislative powers it may tap, if it will, in order to enlarge the body of civil rights on the federal level. If Congress defaults in these tasks or fails to exercise its powers, this failure is attributable not to the lack of constitutional power under our federal system but to a system of practical politics in which sectional differences continue to play a large part.[73]

In the area of voting for more than half the twentieth century, the widespread practices of excluding Negroes from voting continued. Many sources remark that "it is hardly surprising that the Negro has turned to Washington and that Congress has responded with the Civil Rights Act of 1957, the first such federal legislation since 1875."[74]

Commenting on the Civil Rights Act of 1957, in terms of how it promoted equality in the area of voting, Kauper notes:

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[73]Kauper, pp. 205-206. [74]Harris, p. 125.

> Probably the most important feature of this legislation was the section which authorized the Attorney General to bring suit on behalf of Negroes in order to enjoin violation of their voting rights. The effect of such a proceeding is to subject registration officials to the risk of a contempt proceeding in the event that they persist in discriminatory practices. Giving authority to the Attorney General to bring such a suit in order to assert the rights of Negroes is in itself an effective step, both because it takes the burden away from individual Negroes or organizations representing them to bring suits in the first instance and because it may have the effect of relieving Negroes from the economic burden and reprisals that would be effectuated if they themselves brought the suits. In the important Raines case (1960) the Supreme Court held that, because of the public interest in the enforcement of these rights, Congress could properly authorize a suit like this in the name of the United States. According to Justice Brennan's opinion, "there is the highest public interest in the due observance of the constitutional guarantees, including those that bear most directly on private rights, and we think it perfectly competent for Congress to authorize the United States to be the guardian of that public interest in a suit for injunctive relief.[75]

In the general area of civil rights Congress has been credited with making some contributions. For example, the Civil Rights Act of 1957 enacted by Congress has been praised for creating and enlarging the duties and powers of a unique Civil Rights Commission:

> The other important feature of the 1957 act was the creation of the Civil Rights Commission, the first of this kind in the history of the country. The Commission is charged with the task of making studies and investigations if alleged denials of civil rights including voting rights, authorized to conduct hearings, and directed to make reports to Congress and the President. The Commission was clothed with the power of subpoena,

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[75]Kauper, pp. 196-197.

> and during the first three years of its life it conducted extensive hearings and in 1959 submitted its final report which included, inter alia, the recommendations that its life be extended and that further legislation be enacted. As might be expected, the Commission ran into difficulty in conducting its hearings and its power was challenged almost immediately, but to date its authority has been sustained by the Court.[76]

According to some historians, the 1957 Civil Rights Act enacted by Congress failed "to come to grips with the problem of adequate supervision of the registration process to make the voting right effective." In response, Congress enacted the Civil Rights Act of 1960:

> After extended discussions Congress acted to create a system under which federal district courts are authorized to employ so-called registrars who will assist the federal judges in policing the voting registration system and, in effect, will take over in a limited way the function of determining eligibility to vote once a pattern of racial discrimination has been established. The federal court now assumes a responsibility through the use of registrars for seeing to it that qualified Negroes are actually registered as eligible voters despite obstructive tactics by local officers. It is too early yet to tell whether this process will be effective or whether, as some critics claim, this process will be mired in legal technicalities and time-consuming processes.[77]

Our constitutional federal structure invests other powers in Congress. Evidence seems to verify the fact that our system of government prescribes an important role for the legislature, in particular, to perform in discharging

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[76]Kauper, p. 198. [77]Kauper, p. 199.

its responsibilities effectively. Accordingly, sources suggest the general capability of Congress and explain ways Congress could alleviate problems related to employment:

> In these areas of its own legislative competence and authority, the federal government has adequate power not only to create rights but to secure their enjoyment by providing sanctions and remedies not only against those who acting under authority of laws may be found to violate these rights but against private persons as well. Indeed, [Congress has] the power to deal with all persons coming directly within the scope of its legislative competence. If Congress provides that every employer engaged in production for commerce shall not discriminate on the basis of race or color in the choice or discharge of employees, obviously Congress may choose various means to make this policy effective. It may provide criminal sanctions against employers found guilty of violating the act; it may authorize a damage action against the employer by persons discriminated against; it may authorize an injunctive remedy to enjoin employers from continuing these practices; or it may create an administrative remedy pursuant to which an employer's practice is characterized after a hearing by a board as an unfair labor practice which may be corrected by an appropriate order directed to the employer and violation of which may be made punishable. In other words, when we are dealing with rights created by Congressional legislation in the exercise of the independent substantive powers of Congress, we are talking about rights which in the more accurate and strict sense may be called civil rights since they give rise to reciprocal obligations enforceable against private persons, as distinguished simply from constitutional liberties that are protected against government in the interest of individual freedom.[78]

Also, it has been reported that Congress has not exhausted its resources which provide opportunities to eliminate other equal rights problems. In the area of

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[78]Kauper, pp. 179-180.

education, it has been said many times that the spending power of Congress represents a very significant source of authority to deal with civil rights, which has not been utilized generously and proficiently. Regarding this authority, Kauper noted:

> The current discussions apropos federal aid to education highlight the possibility of using the federal spending power as a means of promoting state observance of constitutional rights. Thus it has been proposed as a condition to federal spending for public schools that no federal money shall go to aid in the construction or operation of schools that practice racial segregation. Similarly, nondiscriminatory provisions may be included in federal legislation appropriating money in aid of both public and private housing. . . . Apart from its corrective power to enforce the Due Process and Equal Protection clauses of the Fourteenth Amendment, Congress has substantial reservoirs of power to draw upon to further a program of protecting minorities against discrimination in transportation, employment, education, and housing.[79]

Discussing the role of Congress in respect to rights guaranteeing equal protection and due process under the Fourteenth Amendment by making remedies available through federal courts, reliable sources reveal that Congress has authority:

> The Congressional role in this respect should not be underestimated. We tend to forget that Congress has made an important contribution to the Supreme Court's paramount role in this area by giving the Court a power to review the decisions of the highest courts of the state dealing with questions involving rights, privileges, and immunities arising under the Constitution, treaties, and laws of the United States. If Congress were to limit the Supreme Court's appellate

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[79]Kauper, p. 179.

> jurisdiction as has been several times proposed in recent years in order to deny it opportunity to raise questions arising under the Equal Protection Clause of the Fourteenth Amendment, a large part of the effective apparatus for vindication of these protected rights would be impaired or destroyed. Likewise, Congress has made a valuable contribution to enforcement of the Fourteenth Amendment by making such remedial devices as the injunction, habeas corpus, and the declaratory judgment available in the lower federal courts as well as by legislation subjecting state officers and agents to criminal liability and damage actions in cases where their actions have resulted in denial of due process or equal protection. . . . It is worth noting that the development we have had in recent years directed to the end of terminating law-imposed segregation in public schools is attributable entirely to the action of the federal courts. Congress has taken no positive steps to aid in the more effective enforcement of this decree. Depending . . . upon the Court's authority to interpret the meaning of equal protection and . . . upon the power of the federal courts to make their decrees effective, the Supreme Court and the lower federal courts have been carefully, slowly, and at times with great difficulty in the face of determined opposition, making their way in the attempt to convert the Court's decision into an operating rule of law throughout the country.[80]

Some scholars distinguish between rights that protected against states under the Fourteenth Amendment and the created rights,

> some of which are created directly by the Constitution, either expressly or by implication, and some of which are created by Congress. In a case of the protected rights Congress has a limited function to perform in authorizing corrective devices whereby the judiciary and the executive can make these protected rights effective. In the case of the federally created rights the courts have an important interpretative and enforcement function, but Congress has a broad function since

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[80]Kauper, pp. 173-174.

it can create rights of this character as well as prescribe the remedies for making them effective.[81]

Other endeavors by the legislative branch which seem pertinent to this study include the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Civil Rights Act of 1968. Referring to the Civil Rights Act of 1964, President Lyndon Johnson referred to it as "a challenge to men of goodwill in every part of the country to transform the commands of law into customs of our land." President Johnson praised this action by Congress. While acknowledging that no single legislative act could eradicate all injustice, discrimination, hatred, and prejudice, President Johnson insisted that the Civil Rights Act of 1964 "had gone further in doing so than any previous legislation in the twentieth century." Signing the bill into law the president, perhaps wishing to dramatize the event, informed a nationwide television audience:

> We believe that all men have certain inalienable rights, yet many Americans do not enjoy those rights. We believe all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings--not because of their own failures, but because of the color of their skin.
>
> The reasons are deeply embedded in history and tradition and the nature of man. We can understand--without rancor or hatred--how this happened. But it cannot continue.
>
> Our Constitution, the foundation of our republic, forbids it. The principles of our

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[81] Kauper, p. 181.

> freedom forbid it. Morality forbids it and the law I will sign tonight forbids it.[82]

One writer points out what he considers some significant aspects of the 1964 Act:

> In the more important of its many provisions, the Civil Rights Act of 1964 authorized the Attorney General to initiate school-desegregation suits and eliminated racial segregation in any program or activity receiving federal assistance; however, the most controversial portion of the Act was Title II--or, as it is better known, the 'public accommodations' section. It forbade racial discrimination in all places of public accommodations--hotels, motels, restaurants, service stations, places of entertainment--engaged in interstate commerce. Such discrimination had long been a particularly sensitive area for American Negroes.

Finally, it seems appropriate to mention that this Act met resistance just as the previous Acts had been challenged. Moreover, many sources assert that resistance by white southerners, especially in the Deep South, to the Negroes' exercise of public accommodation rights "took on more violent forms, including murder."[83]

In 1965, Congress passed the Voting Rights Act. Presumably, previous legislation contained provisions for dealing with problems related to voting rights. However, the necessity for this additional legislation is highlighted as follows: "Blacks were still systematically prevented from voting in much of the South. An incredible array

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[82]James C. Harvey, Black Civil Rights During the Johnson Administration (Jackson: University and College Press of Mississippi, 1973), pp. 16-17.

[83]Bland, p. 134.

of public and private obstacles still confronted blacks in their efforts to register and vote."[84] Regarding the inherent value of ensuring the privilege to participate in this important political process, it has been said:

> The vote merits attention because it is one of the most widely distributed of all political resources, because all decisions in a democratic form of government rest ultimately on votes, and perhaps, because it is the major mechanism for translating popular preferences into governmental decisions. Various groups, from the propertyless to women, have sought the vote on grounds that it is an important resource in the implementation of their preferences and the recognition of their interests, as well as their worth as persons. The Negro struggle for political rights fits into this same context.[85]

Perhaps, an interesting corollary of the Voting Rights Act of 1965 is that Congress, though often appearing indifferent to civil liberties, provided legal aid for the poor and served to make the poor [many, if not most, of whom are Negroes] more aware of and sensitive to exercising their legal rights. One writer notes: "Congress's decision in 1965 to finance legal services for the poor on a vastly expanded (if still inadequate) level has had particularly broad repercussions. Existing cadres of civil liberties and civil rights lawyers were augmented

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[84]Harvey, Black Civil Rights During the Johnson Administration, p. 26.

[85]William R. Kreech, The Impact of Negro Voting: The Role of the Vote in the Quest for Equality (Chicago: Rand McNally, 1968), p. 3.

by a vigorous and idealistic group of young men and women representing the poor."[86]

It has been reported that the constitutionality of the Voting Rights Act of 1965 was challenged almost immediately. The South Carolina v. Katzenbach case provides an example: "The state of South Carolina filed suit before the United States Supreme Court on September 25, 1965, to enjoin Attorney General Katzenbach from enforcing the act on the grounds that the law had unconstitutionally invaded the states' rights to establish voter qualifications." It seems that the state of South Carolina failed to accomplish its goal since the Supreme Court, in this case, "unanimously upheld the constitutionality of the entire Voting Rights Act of 1965 on the grounds that it was within the power of Congress to take affirmative measures to implement the Fifteenth Amendment to the Constitution."[87]

Scholars report repeatedly that in early 196[illegible] numerous civil rights bills "languished in Congress." Significantly, in 1966 one civil rights bill considered by Congress contained an open housing provision. It seems that open housing or fair housing proved an insurmountable obstacle. One writer noted the key factors contributing to

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[86]Norman Dorsen, ed., The Rights of Americans: What They Are--What They Should Be (New York: Pantheon Books, 1970), pp. xix-xx.

[87]Harvey, Black Civil Rights During the Johnson Administration, p. 35.

the bill's demise: "The sad, ever outrageous, but inescapable fact seems to be that the white is not yet acclimated to the notion of having a Negro for a neighbor. So the bill . . . became the first civil rights measure to be killed by Congress in nine years." Among others, President Johnson issued an emotional plea calling for fair housing. The president reminded Congress that "in the war, the Negro American has given this nation his best--but this nation has not given him equal justice." Specifically, President Johnson asserted, "The bullets at the battle front do not discriminate--but landlords at home do." Other difficulties and factors that threatened the civil rights bill have been documented.[88]

In late 1967, Congress was once more obligated to confront the civil rights bill. It seemed obvious that passage of such legislature would be difficult, if not impossible. For example, it has been reported: "By late August the House-passed civil rights bill was sent to the Senate Judiciary Committee. Senator Eastland announced that he planned to kill it by adding the 'open' housing provision to it. The Mississippi senator predicted that his action would halt further efforts to pass civil rights laws aimed at the South." Further, it appears that for numerous reasons Congress was not coerced by President Johnson or former civil rights advocates among its membership to pass the bill as it

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[88]Harvey, Black Civil Rights During the Johnson Administration, pp. 37-43.

had been in 1966. For example, it has been disclosed:

> Despite the rhetoric the administration has not pressured as much for civil rights legislation in 1967 as it had in 1966. Being fully aware of the changed complexion of the House and the growing backlash, the president seemed to place a higher priority on support for other matters, especially the undeclared war in Vietnam. Even some of the traditional support of northern moderates and liberals warned: "The open bussing and equal employment bills affected the Northern homeowner and labor unionist, whose interests had not been touched by the civil rights movement. Northern members of Congress from both parties, many of whom had supported civil rights legislation previously, were keenly aware of the sensitive nature of those issues." The coalition of northern Republicans and Democrats so crucial to the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 seemed to have faded away.[89]

Concluding this discussion on the civil rights bill that Congress failed to pass over a two-year period, it seems desirable to note that in 1968 sufficient votes were mobilized to result in enactment of a Civil Rights Act. Beginning the drive toward eventual passage of the Act, President Johnson, in his annual message to Congress on January 17, 1968, asserted: "I shall urge Congress to act on several other pending civil rights measures--fair jury trials, protection of federal rights, enforcement of equal employment opportunity, and fair housing." Another feature in this scenario, some writers claim, can be explained in terms of vigorous efforts of Clarence Mitchell of the NAACP and other members of the 1966 Leadership Conference. For

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[89] Harvey, Black Civil Rights During the Johnson Administration, pp. 46-47.

example, one source notes that these leaders "decided to make the civil rights bill passed by the House in 1967 and still pending in the Senate, the vehicle for open housing legislation in 1968." Also, Senator Everett Dirksen who had played an important role in previous years with civil rights bills had a change of heart which contributed to the eventual success of the bill. Significantly, the senator negotiated a compromise with Ramsey Clark and other civil rights advocates to modify the coverage of the housing section of the bill. Dirksen then introduced an amendment which included eighty percent of the nation's housing.[90]

Congress passed this Act on April 10, 1968. Aspects of the Act include:

> The new law which would go into effect fully in 1970 prohibited discrimination in the sale of rental of about 80 percent of all housing. Most housing built with federal assistance, such as public housing and urban renewal projects, was covered immediately on enactment of the bill. Coverage was to be extended on January 1, 1969, to all multiple-unit dwellings except for owner-occupied dwellings with no more than four units. Also covered on that date were single-family houses, owned by private individuals. Privately owned single-family houses sold or rented by real estate agents or brokers were covered as of January 1, 1970. Private owners selling or renting their house without the services of a real estate agent or broker were exempt. The prohibition against discrimination also applied to financing and brokerage services. The secretary of Housing and Urban Development was to administer this title.

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[90]Harvey, Black Civil Rights During the Johnson Administration, pp. 47-50.

> The bill also provided criminal penalties for injuring or interfering with a person who was exercising specific rights which included: to serve on a jury, to vote, to work, to participate in government or government-aided programs, to enjoy public accommodations, and to attend school or college. In addition, the measure provided similar protection to civil rights workers who urged or helped others to exercise the rights mentioned above.[91]

Also, some significant responses to the Act have been observed. One writer refers to President Johnson's remarks upon signing the bill into law. President Johnson said:

> Now with this bill, the voice of justice speaks again. It proclaims that fair housing for all--all human beings who live in this country--is now a part of the American way of life. This afternoon, as we gather here . . ., I think we can all take some heart that democracy's work is being done. In the Civil Rights Act of 1968 America does move forward and the bell of freedom rings a little louder.[92]

On the other hand, an article in Christian Century noted: "The fact that Washington could sigh with relief when such a minor bit of legislation stumbles through is an indication that the white power structure is still not prepared to do anything about the great injustices that perpetuate poverty."[93] Another source reveals some strengths and weaknesses of the Act. First, the Act disregards zoning

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[91]Harvey, Black Civil Rights During the Johnson Administration, pp. 54-55.

[92]Harvey, Black Civil Rights During the Johnson Administration, p. 55.

[93]"Racism Arrested?" Christian Century, April 24, 1968, p. 507.

laws and building codes. Second, Housing and Urban Development (HUD) lacked enforcement authority. The only other action available was to bypass HUD and proceed directly to a federal district court. Continuing the article notes: "If the procedural and substantive difficulties do not vitiate Title VIII, it may eventually provide an escape valve for Negro frustration. Otherwise, it can best serve only as a temporary sedative. To at least a certain extent, however, exodus from the ghetto is now a practical possibility."[94]

Perhaps, summarizing the impact of efforts by the United States Congress during the mid-twentieth century, one black historian remarks:

> Few developments have affected the movement for racial equality more than the assumption of some responsibility by the government. Within a decade after the Truman Committee on Civil Rights had completed its task, Congress has created the United States Commission on Civil Rights. The significance of the Commission lay not so much in the exercise of its quite limited powers or the success of its quite modest program as in its symbolizing a remarkable and historic reversal of congressional policy on matters affecting race. And having taken this first, halting step, Congress, responding to pressures from the outside as well as from within, took additional steps. It extended the life of the Commission on Civil Rights and enlarged its powers. A few years later in 1964, it enacted into law the most far-reaching civil rights bill ever passed by that body, authorizing agents of the government to protect citizens against discrimination in voting,

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[94]"The Federal Fair Housing Requirements: Title VIII of the 1968 Civil Rights Act," Duke Law Journal, 1969:762-771.

> education, and the use of public accommodations. In the following year it passed the Voting Rights Act, which led to a dramatic increase in the number of black voters and ultimately of black elected public officials. Now that the barrier was breached there would be other legislation in the area, but none as far-reaching or significant as the acts of 1964 and 1965.[95]

The preceding discussion suggests that for several decades Congress did respond, somewhat reluctantly, to the need to eliminate racial inequality in some major areas. Nevertheless, it seems obvious that these actions did not substantially change the status of millions of Negro Americans in their pursuit of equality and justice or first-class citizenship. Hence, the struggle continues and problems remain unsolved. On the other hand, the information presented essentially documents specific resources Congress utilized to address equal rights problems in some areas; i.e., voting, employment, education, fair housing, etc. At the same time, our system of government affords a wider range of resources for use by Congress which the legislature failed to use fully to accomplish greater gains in the crucial area of civil rights. Also, the interrelationships of the three branches could have functioned in a manner to yield more substantive advancement toward equality for all Americans.

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[95]Franklin, Racial Equality in America, pp. 101-102.

Role of the United States Supreme Court

This section addresses the nature and scope of the leadership assumed by the judicial branch of our federal government, particularly in the area of civil rights. Specifically, it seems appropriate to concentrate on the Supreme Court's actions during the twentieth century, which assisted the Negro's efforts to secure equal rights and justice. It should be remembered that prior to 1900 actions by the Court were diametrically opposed to fostering racial equality. For instance, one writer notes:

> The United States Supreme Court had chipped in with the 1896 "separate but equal" decision in Plessy v. Ferguson, holding in essence that Chief Justice Taney was correct when he noted in the famous Dred Scott cases that under the Constitution, "The unhappy black race were separated from the white by indelible marks." The 1896 Court said that the law was "powerless to eradicate racial instincts or to abolish distinctions based on physical differences," and held that the states--and the Federal Government, for that matter--were constitutionally justified in classifying citizens on the basis of race and forbidding their use of state facilities, private accommodations, and public utilities on the basis of that classification. It added that where Negroes were excluded from state facilities or private utilities, they must be furnished separate and equal accommodations for their own use, a hedge that was construed to mean that a one-room Negro school in a church basement was equal to a graded eight-room school for whites and that Jim Crow seats in half of a baggage car were equal to Pullman accommodations.[96]

As the twentieth century began, the Supreme Court was content to obstruct rather than promote the ideals of

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[96]Robert L. Carter et al., Equality (New York: Random House, Inc., 1965), pp. 11-12.

equality and justice. For example, one writer observes:

> By 1900 the elaborate apparatus for the enforcement of equal rights in the Civil Rights Act of 1866, the Fourteenth and Fifteenth Amendments, and subsequent legislation of 1870, 1871, and 1875 was largely a failure, and continued in a somewhat less degree to be so in 1959. . . . Indifferent and inactive Presidents and disinterested or timid Attorneys General did little to enforce the amendments and the remnants of the statutes and the Supreme Court, as we have seen, imposed very considerable obstacles by invalidating key provisions of federal statutes and construing others and the amendments strictly.[97]

Further, for several decades into the twentieth century, it was evident that the Court did not feel compelled to move expeditiously in addressing the inequalities and injustices American Negroes experienced. For instance, it has been noted:

> The long period of legal inactivity which existed for almost thirty years following the close of the nineteenth century ended with but few encouraging signs. Moreover, those few cases were scattered over a period of years and had little effect upon the total problem of discrimination. Rather than representing any sustained efforts, they were only occasional victories and often easily circumvented.

Perhaps, it should be mentioned that these cases involved discrimination in the voting process and housing. For instance, in 1915, the Court declared use of the "grandfather clause" unconstitutional and in Warley v. Buchanan (1917) the court "held as unconstitutional a municipal ordinance forbidding Negroes to occupy houses on blocks where a majority of the populace was white." The latter decision

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[97]Harris, p. 107.

according to some legal scholars, "furnished the initial breakthrough in the housing area."[98]

Moreover, it has been reported that in the mid-1920s the Supreme Court acquired additional resources to attack discrimination:

> In 1925, the passage of a statute pertaining to the Supreme Court's jurisdiction was to give rise to the possibility of increased Supreme Court review of "due process" in the state courts. The true significance of this statute has been largely hidden and ignored. This statute permitted the Supreme Court to review cases through certiorari rather than being limited to cases on appeal. Hence, it made it possible for the Court to select the cases where it felt review was necessary and also to prevent the overcrowding and congestion of the docket. At the same time, it allowed the Court to proceed at its own pace. While it has been questioned as to what extent this reform legislation has been responsible for greater Supreme Court activity, this little noted development might properly be viewed as a prelude of what was to come.[99]

Significantly, one source refers to the Court's activity in the area of school segregation during the same period:

> In the first three decades of the new century, the Court's course in reference to school segregation had been weak and inconclusive. It had not faced the problem squarely, but its evasions bolstered the widely held lay and legal belief that such segregation squared with the requirements of the equal-protection clause of the Fourteenth Amendment. States were encouraged to pursue separate school policies and practices. The ruling [rejecting Negro students] in the Berea College [Kentucky] case was indefensible. It put the great

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[98]Donald B. King and Charles W. Quick, Legal Aspects of the Civil Rights Movement (Detroit: Wayne State University Press, 1965), p. 15.

[99]King and Quick, p. 16.

> seal of Supreme Court approval on racist legislation that was patently prescribed even under the most restrictive interpretation of the amendment and, in so doing, institutionalized racial segregation and the color-caste system. The Court's Negro wards fared ill at its hands.[100]

Since by the 1930s, it became apparent that the Court was adopting a more meaningful role in the advancement of racial equality, perhaps some of the factors contributing to this change of attitude should be mentioned. It has been remarked: "In part, the changed outlook of the Supreme Court reflects 'cultural drift' toward more egalitarian values in the United States. Although the rulings of the Court are not necessarily a direct reflection of prevailing views among the populace, changes in the philosophy of the Court occur in the context of more or less in harmony with broader cultural and social trends."[101] Parenthetically, it should be remembered that the nation was at a crisis in the early 1930s. According to most historians, the crisis had been touched off with the stock market crash in the fall of 1929 and probably intensified the Negro's problem, particularly in terms of the unprecedented unemployment. For instance, millions of people, especially Negroes, were out of work.

During the third decade of the twentieth century, the Court's involvement in securing equal rights was significant in the area of employment. Commenting on the Court's

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[100]Miller, p. 216. [101]Broom and Glenn, p. 56.

response to persistent discrimination in employment, Loren Miller notes:

> There were well-defined limits to effective judicial action against discrimination in employment, but the Court responded to every invitation extended to it from the 1930's onward to exert its power to strike down discriminatory labor practices. It administered the final death blow to state statutes which had the effect of fostering peonage; it blazed a new trail in its holdings that railway labor unions could not discriminate against Negro workmen where they were placed in a position to do so by federal statutes; it narrowed the doctrine that private organizations were free to discriminate under any and all circumstances, with the labor case rulings that where the union accepted statutory benefits, it was restrained from the exercise of racial discrimination in much the same manner as a legislature; it recognized the right of Negroes to picket against discrimination in employment and placed that right on a par with picketing rights of unions, despite an unnecessary limitation of that power in the Hughes case; it validated state fair-employment statutes and refused to limit their power to act to purely intrastate employers. Except in the case of peonage statutes, these actions were significant departures from the restrictive constitutional view taken in earlier cases.[102]

Another source praises the Court's exemplary leadership and predicts the far-reaching effect:

> [The Court] overturned or ignored its own strangling precedents and even assumed an amazing leadership in the area of civil rights. By the sheer weight of its own example, it inspired something of a similar zeal on the part of the executive branch of the government and ultimately helped create a climate of public opinion in which Congress was induced to act by passing the Civil Rights Acts of 1957, 1960, and 1964, and 1965. The Court's equalitarian decisions beginning in the mid-1930's gave increasing freedom and opportunities to civil rights organizations to press it as well as the executive and legislative branches of government for ever widening reforms.[103]

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[102]Miller, p. 102. [103]Miller, pp. 14-15.

Historians generally agree that numerous factors contributed to the Court's change of attitude:

> The great depression and the measures taken to ameliorate it were levelers of a kind, and the war against Nazi Germany and its racist dogmas, with preachments of equality by American leaders, was a great equalizer. Beyond these forces, however, was the rise of the Negro race economically and politically to the extent that more Negroes were ready to challenge discriminations which in other times were accepted with indifference or resignation. Finally, by 1935 powerful groups, well supported by numbers and money, had arisen to work for the cause of Negroes in the civil rights vineyard, so that cases presented in the 1930's and afterwards were, for the most part, based on adequately prepared records in the trial court and were always marked by the most competent presentation of issues in appellate proceedings.[104]

Perhaps, at this point we should take a look at the socio-political climate in America during the forties. Among the numerous observations made about this period in our nation's history, the following seems important for the purpose of this study:

> Racial discrimination burdened the consciences of some white Americans, but not enough. Most never thought twice about the fact that in one-third of the states their fellow citizens with dark skins were excluded from most decent schools and restaurants and public parks, were confined to the rear of buses and to separate railroad cars and could not vote in the meaningful elections, the primaries; that, North and South, they were largely limited to menial employment; that they were forced to serve in segregated units of the armed forces of the United States; that, eighty years after the Civil War, they could not sit down at a drugstore lunch counter or see a movie in downtown Washington, D.C., the capital of the country.[105]

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[104]Harris, pp. 109-110.

[105]Anthony Lewis, Portrait of a Decade (New York: Random House, 1953), p. 3.

Beginning in the early forties and continuing for two decades, the Court became favorably disposed toward cases brought before it by persons aggrieved over racial discrimination. For example, John Hope Franklin comments: "In cases involving education, housing, transportation, civil rights, and voting, the federal judiciary handed down a series of landmark decisions during the last three decades that greatly encouraged Negro Americans and all Americans who sought racial equality."[106] Another appropriate comment on the Court's leadership includes the following:

> As the Supreme Court broke with old precedents and either overruled them directly or indirectly to find a path back toward the goal of the color-blind state envisioned by the framers of the Civil War Amendments, it acted as a catalytic agent to loose other great equalitarian forces. It refurbished the concept of the Constitution as the fountainhead of equality when it appealed to that document for justification of the decisions it rendered. More and more often U.S. Attorneys General, who had been worse than laggered in enforcement of old Civil Rights statutes, appeared as a friend of the court--often at the invitation of the justices--to throw the weight of the executive branch of the government behind racial reforms. The Court's constant reiteration of the sentiments that its civil rights decisions were required responses to the constitutional guarantees stimulated and helped create a climate of public opinion that demanded extension and intensification of the very reforms it had initiated.[107]

The Supreme Court received criticism when it assumed leadership of social reform. Critics seem to view the Court's leadership as a departure from its traditional

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[106]Franklin, Racial Equality in America, p. 103.

[107]Miller, pp. 431-432.

judiciary role--that of declaring and interpreting the law as enacted by the legislature and as enforced by the executive branch of democratic government. Such criticism seems to disregard the two facts: (1) the impact of the doctrine of judicial supremacy on our institutions is immense and (2) our Supreme Court, as the final repository of state power, plays a primary role in American government.

Those who criticize the Court's current efforts to promote equal rights did not criticize the Court when its leadership resulted in the weakening and emasculating the Civil War Amendments. In other words, the Court was commended highly for its leadership then and condemned now for its leadership.[108]

Relentless and formidable leadership in the area of civil rights became apparent during the mid-twentieth century. Several cases illustrate the Court's unprecedented endeavors. For example, in Shelly v. Kraemer (1948) the Court held that enforcement of restrictive covenants was unconstitutional and in violation of the Fourteenth Amendment. Apparently, noting the most important aspect of this decision, one source points out: "By increasing the scope of the state action concept, the Court furnished a general judicial technique that later was to prove invaluable [since subsequently this technique was used in numerous cases to overcome the separate but equal doctrine]." Another case--

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[108]Miller, p. 432.

Sweatt v. Painter (1950)--provides a second example. In the Sweatt case, the Court reversed a decision of the Texas Supreme Court which held that a new "basement" law school for Negroes was equal to the University of Texas Law School. One incident of great importance, according to legal scholars, "occurred in the Court's analysis of 'separate but equal'" and the indication that the presence of intangible factors may make separate facilities inherently "unequal."[109]

The McLaurin v. Oklahoma State Regents case (1950) represents a third example of the praiseworthy leadership in the area of equal educational opportunities. In the McLaurin case a Negro graduate student at the University of Oklahoma was required by state law to sit in a segregated area of the classroom, cafeteria and library. Declaring this differential treatment "constitutionally impermissible" the Court asserted that such "restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Also, the Terry v. Adams case (1953) which was discussed in a previous section addressed discrimination in the area of voting rights. In Terry, the Court held that white primaries in Texas were unconstitutional since they excluded Negroes. Another example is Henderson v. United States (1950), a case which involved discrimination in the dining car of a passenger train.

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[109]King and Quick, pp. 20-21.

Specifically, "a Negro was denied the right to sit in the portion of the dining car reserved by the railroad for whites only." The Court's decision held that this was a violation of an Interstate Commerce Act. In addition, the Court said: "We need not multiply instances in which these rules sanction unreasonable discrimination. The curtains, partitions and sign emphasize the artificiality of a difference in treatment which serves only to call attention to a racial classification of passengers holding identical tickets and using the same public dining facility."[110]

Of special importance is the renown Brown v. Board of Education case (1954 and 1955). According to most authorities, the Court's decision in the Brown cases not only has historical significance for affording equal education for all American children but also for initiating numerous reforms. Many sources verify the Court's initiative and confirm its effectiveness in promoting social reform. For example, one writer comments:

> The desegregation decision, Brown v. Board of Education . . . ushered in a series of profound reforms. States and federal criminal procedures were modified to protect defendants, including juveniles. Jurisdiction was assumed over the apportionment of state and federal legislative bodies. . . . There developed an aggressiveness in protecting the rights of the Negro. . . . These results were accompanied by significant growth in the jurisdiction of the federal courts and by

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[110]King and Quick, pp. 21-22.

development of legal doctrine that together provide a solid basis for further change.[111]

One source acknowledges the importance of the Brown decision in upholding the constitutional prohibitions against racial discrimination in public education. But more importantly, it claims that the Court's actions probably gave impetus to review of other inequalities in American life. Accordingly, Supreme Court decisions of the sixties influenced constitutional law dealing with the political processes of government. For example, in several cases--Gray v. Sanders (1963); Wesberry v. Sanders (1964); and Reynolds v. Sims (1964)--the Court made it patently clear that both election and representation in the legislature must afford voters per capita equality with regard to economic interest or place of residence within the political unit.[112] The Court decision in Harper v. Virginia Board of Elections (1966) invalidated state laws making the payment of poll tax a prerequisite to voting: "The Supreme Court of the United States . . . struck down the Virginia requirements as a violation of the equal protection of the Fourteenth Amendment. . . . In overruling an earlier decision in Breedlove v. Suttles, Justice Douglas, speaking for the majority of the Court, noted in part: 'Wealth, like race, creed, or color, is not

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[111]Dorsen, p. xviii.

[112]Ann Fagan Ginger, The Law, The Supreme Court and the People's Rights (Woodbury, New York: Barron's Educational Series, Inc., 1973), p. 463.

germaine to one's ability to participate intelligently in the electoral process. . . . The requirement of fee paying causes an invidious discrimination.'"[113]

In other cases, Court decisions, regarding the administration of criminal justice, reflected an increasing influence of egalitarianism. In 1966, one writer notes optimistically that "no period of our history since the adoption of the Bill of Rights can equal the last decade in the scope, rapidity, and intensity of the changes in the law of criminal procedure." He adds that "many of the changes are the result of decisions by the United States Supreme Court."[114]

Regarding the sit-in cases of the sixties, it has been observed:

> The historian will be struck with the fact that in every case in which it granted review--as it did in most cases--the Supreme Court upset convictions upheld by state courts of last resort in the great sit-in controversy. Time and again, the Court put its own construction on the facts and came to conclusions opposed to those of the state courts. Federal supremacy was asserted with vengeance, and no ingenious interpretation of state laws governing breach of the peace, unlawful assembly, or tresspass was availing against what seemed the obvious determination of the Supreme Court to protect sit-in defendants against the wrath of the states. These decisions had significance beyond protection of individual rights: they left the students and their sympathizers free to pursue their massive assault on discrimination in places of public accommodation, to keep the controversy

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[113]Bland, p. 143. [114]Dorsen, p. 433.

open, and to marshall public sentiment for congressional action.[115]

Perhaps, the following comment on the Supreme Court's leadership characterizes the nature, scope, and potential summarily:

> The sum of the whole matter is that the Supreme Court has been bold, aggressive, and creative in resuscitating civil rights and in restoring them to the place assigned them in the constitutional firmament by the Civil War Amendments. It has had to break old shackles and depart from old precedents of its own making. It has rarely hesitated. Where it could have taken refuge in those old precedents, it has resisted the temptation to do so and has remained undaunted by the shock waves of criticism and abuse. It has been tried and found worthy of the past moments of its own greatness. In its great decisions in the white primary cases, the confessions cases, the race-restrictive covenant cases, the school cases, the sit-in cases, the Supreme Court has moved at an ever accelerating pace toward making the Negro more and more a free man and less and less a freedman.[116]

Role of Presidents of the United States

Regarding the role of president or the executive branch of the federal government in general, it seems desirable to mention duties that authorities consider paramount:

> An important role of the executive department is to see to it that the independence and integrity of the federal courts are observed and that judicial orders are carried out. Another important function is to see that the basic conditions of peace and order are maintained, and those, in turn, may involve the protection of important constitutional rights. . . . Moreover, some remedies that Congress may provide for vindication of certain

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[115]Miller, pp. 402-403. [116]Miller, pp. 432-433.

> rights depend for their effectiveness upon the aggressiveness, the initiative, and the energy of the executive as it operates through the Justice Department or otherwise in the prosecution of these remedies.[117]

Until the mid-twentieth century, presidents failed to utilize their resources and authority to remedy persistent racial problems. In fact, Gunnar Myrdal wrote in 1944:

> The Negro problem is not only America's greatest failure but also America's incomparably great opportunity for the future. If America should follow its own deepest convictions, its well-being at home would be increased directly. At the same time America's prestige and power abroad would rise immensely. The century-old dream of American patriots, that Americans should give to the entire world its own freedom and its own faith, would come true. America can demonstrate that justice, equality, and cooperation are possible between white and colored people. . . . America is free to choose whether the Negro shall remain her liability or become her opportunity.[118]

Perhaps, Myrdal's comments stemmed in part from the fact that for the first three decades of the twentieth century the plight of Negroes to secure first-class citizenship had been disregarded by the federal government, in general, and the executive branch in particular. When there was response from the executive branch, during the decades following the 1930s, pursuit was limited or inadequate. Commenting on the Franklin Roosevelt administration, one writer observes:

> There was scarcely any concern about blacks in the twentieth century until the Franklin

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[117] Kauper, p. 181.

[118] Myrdal, pp. 1021-1022.

> Roosevelt administration. Even then, blacks benefited for the most part only because most of them were among the poor who were helped by the New Deal programs. The emphasis was on economic and social class rather than color of skin, but societal institutions, including the "breadlines," remained segregated. The federal government made no concerted effort to lift the barriers that surrounded blacks at every turn. During World War II, as the result of a threatened march on Washington by black leaders, President Roosevelt issued an executive order banning discrimination in employment in defense industries and established a Fair Employment Practices Committee (FEPC) to deal with government contract employment.[119]

During the administration of President Harry Truman the pace toward accomplishing equality and justice did not seem to accelerate greatly. Some of the achievements of President Truman include creating a Fair Employment Practices Board (FEPB) in the Civil Service Commission, since Congress had discontinued the FEPC; initiating desegregation of our nation's armed forces; and recommending a civil rights program. Truman's proposal of a civil rights program was considered significant at that particular time by some people. On the other hand, it has been noted: "President Truman, a master at making promises which he had no intention of fulfilling, appointed a committee, in December, 1946, to work out a civil rights program. The resulting document attacked lynching and Jim Crow in its manifold forms. Truman, however, obviously had no intention of making a fight for this program, and

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[119]Harvey, Black Civil Rights During the Johnson Administration, p. 3.

after it ran into strong Congressional opposition, he let it gather dust on the shelf."[120]

The accomplishments of the Eisenhower administration in the area of civil rights seem to be meager. Some historians have pointed out Eisenhower's abhorrence of the use of executive power to deal with what he considered basically local problems. However, it has been observed that President Eisenhower continued his predecessor's attempts to desegregate the military. Eisenhower also established committees to deal with racial discrimination against Negroes in both government and contract employment. He, also, promoted desegregation in Washington, D.C. Eisenhower's lack of commitment to school desegregation was evident in that Eisenhower seemed to disassociate himself from the Brown cases. Sources indicate that he never publicly committed himself to desegregation of public schools. Nevertheless, it has been observed that he reluctantly set an important precedent by sending in federal troops and federalizing the Arkansas National Guard to enforce a federal court order for school desegregation in Little Rock. Identifying Eisenhower's own role as ambigious, historians record the fact that it was during Eisenhower's administration that Congress passed the Civil Rights Acts of 1957 and 1960.[121]

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[120]Foster, p. 530.

[121]Harvey, Black Civil Rights During the Johnson Administration, p. 4.

During the Kennedy and Johnson administrations, presidents probably responded most aggressively to foster rights to which Negroes were entitled. Hence, this section will deal in some depth with the efforts of these two presidents to utilize the power and the influence of the presidency to effectuate significant advancement in the area of civil rights.

Some of President Kennedy's responses to racial injustice and discriminatory practices in America should be discussed. His contributions to the Negro's struggle for equal rights and justice have been documented many times. Evidence supports his involvement in the areas of housing, employment, and education. In addition, it should be mentioned that President Kennedy appointed numerous Negroes to federal positions and sought to reduce discriminatory practices in the armed forces.

Our system of government provides substantial opportunity for the president to effectuate significant change in civil rights and to promote reform. Outstanding, perhaps, is the president's authority emanating from the prestige of his office and originating within the province of his executive power. For example, the president can issue executive and administrative orders and make speeches to influence public opinion. Also, the president can utilize his personal influence to convince governmental officials to enforce pertinent policies and offer proposals to Congress. As commander-in-chief, the president has

the power to make changes in the armed forces and to call on the military to enforce court orders. Perhaps, most importantly, the president can exercise his own authority in the area of federal funding. Other powers of the president include his ability to encourage or threaten litigation in the courts and to make federal appointments.[122]

During the Kennedy administration, many sources acknowledge that Attorney General Robert Kennedy served as the chief strategist and leader of civil rights efforts within the federal government. Interestingly, the nature and scope of Robert Kennedy's responsibilities and authority have been summarized. "The president's brother, Robert Kennedy, who was attorney general . . ., gave overall direction to the administration's civil rights policies. Major questions of policy and execution to cope with large-scale problems were dealt with by him and his staff."[123]

To reduce discrimination in housing, President Kennedy issued an executive order called "Equal Opportunity in Housing." Regarding this particular executive order, it has been explained: "Under its terms the president directed

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[122]James C. Harvey, Civil Rights During the Kennedy Administration (Hattiesburg, Mississippi: University and College Press of Mississippi, 1971), pp. 17-18.

[123]Harvey, Civil Rights During the Kennedy Administration, p. 21.

federal agencies to take every proper and legal action to prevent discrimination in (1) the sale or leasing of housing which was owned or operated by the federal government; (2) housing which was constructed or sold through loans which were made, insured, or guaranteed by the federal government; and (3) housing which was made available through slum clearance or urban renewal programs."[124]

In the area of employment, discrimination persisted. Discrimination in federal employment caused great concern. For example, one source notes: "Between June 1961 and June 1962, the federal employment of Negroes increased by only 11,000, while the total number of federal employees increased by more than 62,000."[125] Further, it has been mentioned: "According to a Committee on Equal Employment Opportunity report in 1964, Negroes had increased since 1961 from 12.9 to 13.2 percent of all federal employees, and in the Plans for Progress companies the increase was from 5.1 to 5.7. By the end of 1963, Negroes were still concentrated in the least skilled and poorest paying jobs in both public and private categories."[126]

President Kennedy assumed the responsibility for addressing discrimination in employment. Among other things,

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[124]Harvey, Civil Rights During the Kennedy Administration, p. 29.

[125]Franklin, From Slavery to Freedom, p. 627.

[126]Harvey, Civil Rights During the Kennedy Administration, pp. 48-49.

in 1961, the president made the following announcement:

> I am today issuing an Executive Order combining the President's Committee on Government Contracts and the President's Committee on Government Employment Policy into a single President's Committee on Equal Employment Opportunity.
>
> Through this vastly strengthened machinery, I intend to ensure that Americans of all colors and beliefs will have equal access to employment within the government, and with those who do business with the government.
>
> This order provides for centralization of responsibility for those policies under the Vice-President. It requires the Secretary of Labor--with all resources of the Department of Labor at his command--to supervise the implementation of equal employment policies. And it grants, in specific terms, sanctions sweeping enough to ensure compliance.[127]

Also, during the Kennedy administration efforts were made to obtain cooperation and assistance from companies not holding government contracts in providing for equal job opportunities. In June of 1963, President Kennedy issued another executive order which was designed to reduce job discrimination. For example, it has been reported: "President Kennedy issued Executive Order 11114 in which he extended the authority of the Committee on Equal Employment Opportunity to cover any federally assisted construction project, whether by loan, grant, contract, guaranty, or insurance; and he empowered the committee to withhold federal funds from any project in which discrimination against workers was practiced." Despite these efforts which were considered praiseworthy at the time,

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[127]Harvey, Civil Rights During the Kennedy Administration, p. 48.

authorities pointed out, in 1965, that the President's attempt to deal with job discrimination under his 1961 Executive Order had little impact."[128]

Perhaps, it should be pointed out that the year 1963 marked the one hundredth year of Negro emancipation and one year of Negro revolution. Many sources contend that Americans experienced the most serious domestic crisis since the Civil War and that there were only limited signs of progress in the area of civil rights. For example, Lerone Bennett notes:

> In scores of cities, North and South, there were riots and near-riots and small wars were fought in Cambridge (Maryland), Danville (Virginia), Savannah, and Birmingham. There were . . . more than ten thousand racial demonstrations (sit-ins, lie-ins, sleep-ins, pray-ins, stall-ins) in this year, and more than five thousand American Negroes were arrested for political activities. The whole army of resistance and rebellion reached a pitch in the Red Summer of 1964, one of the most turbulent summers in American race relations. . . . Negro ghettos were spreading like hot lava across the concrete crags of every metropolitan area; Negro unemployment was at a 1930 depression level; and Negro schools, the Supreme Court to the contrary notwithstanding, were separate and transparently unequal. In the North, there was gentle evasion of the spirit and letter of the Constitution; and in the South, there was open defiance. As the year of decision opened, federal troops were maintaining an uneasy vigil at the University of Mississippi. And police officers and black rebels at the Student Nonviolent Coordinating Committee (SNCC) were fighting grim guerrilla actions in the wilds of the Black Belt counties of southwest Georgia and central Mississippi.[129]

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[128]Harvey, Civil Rights During the Kennedy Administration, p. 48.

[129]Bennett, p. 328.

Another writer makes the following remark: "The fulfillment of the Negro revolution plainly demanded much more than the achievement of the Negroes' legal rights. In April 1963 the unemployment rate for non-whites was 12.1 percent, for whites 4.8 percent. Poverty afflicted half the non-white population, less than one-fifth of the white population. Three out of five non-white families lived in deteriorating or dilapidated buildings or without plumbing. The racial and social problems were inextricably intermingled." Arthur Schlesinger comments on the prevalence of revolutions in American history and implies their propensity to effect social reform:

> Every great period of social change in American history has been set off by the demand of some excluded but aggressive group for larger participation in the national democracy: in the age of Jackson by the frontier farmer, the city worker, the small entrepreneur; in the progressive era, by the bankrupt farmers of the middle border and the by-passed old upper classes of the cities; in the New Deal by labor in mass-production industries, the unemployed and the intellectuals. The uprising of the Negroes now contained the potentiality of ushering in a new era which would not only win Negroes their rights but renew the democratic commitment of the national community. It also contained the potentiality, if the anger the Negroes exceeded the will of the government to redress their grievances and the capacity of their own leadership to retain their confidence, of rending and destroying the fabric of American society. . . . A generation ago Roosevelt had absorbed the energy and hope of the labor revolution into the New Deal. So in 1963 Kennedy moved to incorporate the Negro revolution into the democratic coalition and thereby help it serve the future of American freedom.[130]

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[130]Arthur Schlesinger, A Thousand Days: John F. Kennedy in the White House (Boston: Houghton Mifflin Company, 1965), pp. 975-977.

It seems that President Kennedy urged Congress to respond effectively to civil rights problems. One source notes: "The President declared that . . . he was going to ask Congress to act on the proposition that race had no place in American life or law. He pointed out that already the judiciary and the executive branches of government had made that commitment and that it was time for Congress to act." Accordingly, the president's message to Congress in 1963 stressed that Negroes' drive for justice had not remained stationary nor would it do so until full equality had been achieved. Urging passage of Civil Rights Bills, the president said: "The growing and understandable dissatisfaction of Negro citizens with the present pace of desegregation and their increased determination to secure for themselves the equality of opportunity and treatment to which they are rightfully entitled, have underscored what should have already been clear: the necessity of the Congress enacting this year--not only the measures already proposed--but also additional legislation providing legal remedies for the denial of certain individual rights."[131]

During the Kennedy administration, there were efforts to eliminate discrimination in public schools. For instance, in the fall of 1962 the Justice Department filed an unprecedented law suit in the federal district court in Richmond, Virginia, to end racial discrimination in the

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[131]Harvey, Civil Rights During the Kennedy Administration, pp. 56-58.

Prince George County Public Schools.[132] The widespread significance of this action has been indicated: "This marked the first time that the federal government had initiated a school desegregation suit. It was an important case for private groups, because they foresaw that the financial burden of instituting and prosecuting civil rights cases might be shifted to the federal government in those parts of the South which benefited from impacted area aid." Also in the fall of 1962, there existed evidence to verify the president's leadership. Of tremendous importance, perhaps, is evidence not only of President Kennedy's responsive and exemplary leadership but also the effectiveness of cooperation between branches of our government to secure equal rights for Negroes. For example, actions were taken to ensure James Meredith's admission into the University of Mississippi in compliance with a federal court order. Accordingly, it has been noted:

> In order to carry out the court order, it was necessary for the Justice Department to dispatch 541 United States marshals, and the president alerted several thousand federal troops and federalized the Mississippi National Guard. Federal troops were retained in Oxford for the rest of the year to maintain order and to protect Meredith, as he completed requirements for a degree.[133]

The president's commitment to equal rights in education was again demonstrated in 1963 when Governor George

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[132]King and Quick, p. 263.

[133]Harvey, Civil Rights During the Kennedy Administration, pp. 40-41.

Wallace refused to allow two Negroes, Vivian Malone and James Hood, to register at the University of Alabama. He signed an executive order to federalize the Alabama National Guard to ensure their registration. Further, Kennedy appeared on television and explained to the nation the necessity for the use of federal troops. Delivering an address praised by many people as the Second Emancipation Proclamation and by others as the Kennedy Manifesto, the president asserted: "We are confronted with a moral issue. It is as old as the scriptures and as clear as the American Constitution. The heart of the question is whether all Americans are to be offered equal rights and equal opportunities, whether we are going to treat our fellow citizens as we want to be treated."[134]

Kennedy was willing to indicate to all Americans that his administration would choose individuals for important governmental appointments on the basis of their merit and without regard to other considerations. Of some importance is the fact that Kennedy appointed Negroes to numerous positions. One writer remarks:

> Kennedy showed little hesitation in appointing Negroes to important federal positions. As judges he appointed Thurgood Marshall to the Circuit Court in New York, Wade McCree to the District for Eastern Michigan, James Parsons to the District Court of Northern Illinois, and Marjorie Lawson, Joseph Waddy, and Spottswood Robinson to the bench

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[134]Harvey, Civil Rights During the Kennedy Administration, pp. 41-42.

> in the District of Columbia. Robert Weaver became the head of the Housing and Home Finance Agency . . . . The President also appointed George L. P. Weaver to be Assistant Secretary of Labor, Carl Rowan as Deputy Assistant Secretary of State and later Ambassador to Finland, and Clifton R. Wharton and Mercer Cook to be Ambassadors to Norway and Niger, respectively. He appointed two Negroes, Merle McCurdy and Cecil F. Poole, as United States Attorneys, several others to presidential committees working in the civil rights field and to other boards and commissions, including John R. Duncan to the Board of Commissioners of the District of Columbia.[135]

The preceding information does not pretend to include all endeavors of the Kennedy Administration to ensure equal rights for Negro Americans. However, it presents some evidence of President Kennedy's active involvement in the area of civil rights. Particularly in education the President demonstrated the leadership and coordination of federal resources which yielded benefits. One writer evaluates achievements of the Kennedy Administration:

> In appraising the Kennedy record on desegregation in education, one salient feature stands out: the President and his administration spokesmen have created a new mood which at the moment is primarily qualitative, but which will eventually have its quantitative effect on the Negro community. Following an era in which the federal executive had maintained a posture of an impartial agent of law enforcement and a neutral arbiter between Negro claims on the one hand and white supremacy on the other, the Kennedy Administration has resolutely moved the presidency into a position of support for the embattled judiciary on the side of Negro rights.[136]

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[135]Franklin, From Slavery to Freedom, pp. 626-627.

[136]Harvey, Civil Rights During the Kennedy Administration, p. 42.

John Hope Franklin notes:

> The young President had no ambitious plans for new legislation to elevate the Negro in American life. Instead, he looked toward expanded executive action, especially in those areas where federal authority was most complete and undisputed. He hoped, moreover, to use the prestige of his office to exercise the "moral leadership" to which he had referred during the campaign. He encouraged the Department of Justice, headed by his brother Robert, to carry forward its efforts to secure the right to vote through negotiation and litigation.[137]

In another source there exists evidence that the office of the president was transformed during the Kennedy administration. This transformation was apparently most significant in the area of civil rights. For example, it has been observed:

> President Kennedy changed the image of the presidency from a position of seeming neutrality on civil rights as under the Eisenhower to one of positive actions on behalf of the frustrated blacks. In his executive actions, President Kennedy relied heavily on precedents established during previous administrations. . . . In fact, one might say that Kennedy returned the presidency to the attempt at leadership of the civil rights movement as under Truman. John F. Kennedy was, of course, more successful, though much remained to be done at the time of his death.[138]

Perhaps it should be added that despite some advancement of Negro rights, much remained to be accomplished. Further, it has been noted: "The president's leadership role had been vital in obtaining a meaningful bill which had a chance of passage in the House. This goal of enacting a

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[137]Franklin, From Slavery to Freedom, p. 626.

[138]Harvey, Civil Rights During the Kennedy Administration, p. 71.

civil rights bill was unfulfilled because of his death on November 22, 1963. But a new president, Lyndon Johnson, made it plain in an address to Congress a few days later that he meant to see the bill passed into law. His own leadership played a major role in fulfilling that part of John F. Kennedy's program by July 1964, when the most far-reaching civil rights bill in American history became law. A significant step had been taken toward making the Negro a first-class citizen of the United States."[139]

In the 1960s direct action occupied center stage in the Negro's quest for equality. At the same time Negroes were reminded by leaders that the ballot and the courts were still valuable instruments for achieving progress. In 1964, Roy Wilkins, executive secretary of the NAACP considered by many the most consistently powerful civil rights organization, insisted that the flexible use of a variety of tactics would be essential if the civil rights movement were to accomplish its goals. Wilkins asserted: "We cannot have meaningful change in human relations, especially if these involve the revision of laws and uprooting of tradition, without confrontation, tension and occasional strife."[140] Continuing, Wilkins said:

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[139]Harvey, Civil Rights During the Kennedy Administration, p. 63.

[140]Frances L. Broderick and August Meier, eds., Negro Protest Thought in the Twentieth Century (New York: The Bobbs-Merrill Company, Inc., 1965), p. 397.

> The plain lesson is that we must use every method, every technique, every tool available. We need to devise new tools. Our attack must be across the board and must be leveled at all forms and degrees of second class citizenship. Where one weapon is sufficient, let it be employed. Where a combination is required, let it be used. Where variations in timing and methods will be effective, by all means let us employ them. But let none of us, in the North or in the South, "activists" or not, fall into the trap, at this crucial stage, of attempting to solve all problems everywhere by a single method.
>
> If Negro citizens today need to re-examine their positions, white people are under no less obligation to review theirs. Despite the bitter-enders, the question of the day is not whether racial inequality and its principal tool, segregation, shall survive. The question is only on the means and the pace of eliminating it. Diehard opposition will but delay matters; it cannot win. . . . American Negro citizens are a unit insisting that the Constitution of the United States guarantees protection of their citizenship rights against the abridgements and denials of any racist doctrine or practice, in Atlanta or in Spokane.[141]

In 1964, Negroes expected to move at an accelerated pace toward the practical realization of first-class citizenship.

President Lyndon Johnson seemed reluctant to use the power of his office to press Congress toward passage of the Voting Rights Act. However, on March 15, 1965, he addressed the matter of voting as a basic right, and reminded Congress that "every device of which human ingenuity is capable has been used to deny this right."[142]

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[141]Broderick and Meier, p. 400.

[142]Harvey, Black Civil Rights During the Johnson Administration, p. 31.

He concluded his speech by outlining proposals which he planned to submit to remedy the existing problems.

On August 6, 1965, signing the Voting Rights Act into law, Johnson asserted that the act would "strike away the last major shackle" of the black's "ancient bonds." Generally speaking, this act suspended literacy tests and gave the attorney general the power to appoint federal examiners to supervise voter registration where tests or similar qualifying devices existed.[143]

Johnson was praised for bringing more blacks into prominent federal positions than any previous president. Noting that the urban Negro's suffering was greatest in the area of unemployment, one source suggests that "President Johnson attempted to set a pattern for fair employment by continuing to appoint Negroes to high government posts."[144] Johnson's appointments included the following: Thurgood Marshall, Solicitor General and Associate Justice of the Supreme Court; Robert Weaver, Secretary of Housing and Urban Development; Hobart Taylor, Board of Directors of the Export-Import Bank; Clifford Alexander, Chairman of the Equal Employment Opportunity Commission; Theodore Berry, Assistant Director of the Office of Economic Opportunity (OEO); and Ruby Martin, Director of the Office of Civil

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[143]Harvey, Black Civil Rights During the Johnson Administration, p. 34.

[144]Franklin, From Slavery to Freedom, p. 641.

Rights; and Carl Rowan, Director of the United States Information Agency (USIA). As ambassadors, he appointed James Nabrit, Jr., to the United Nations, Patricia Harris to Luxenbourg, Clinton E. Knox to Dahomey, Franklin Williams to Ghana, and Merle Cook to Gambia.[145]

In the area of employment, Johnson used the power of the presidency to promote reform. For example, in 1965, he issued an executive order which transferred the responsibility for widening equal employment opportunities within the federal government from the President's Committee on Equal Employment Opportunity to the Civil Service Commission. Revealing some activities of the commission, James C. Harvey observed:

> The commission almost immediately undertook efforts to recruit and train personnel and to police various efforts at equal employment opportunity within the federal government. A number of governmental agencies took independent action in that direction too. In 1966 the commission established a new program called MUST (Maximum Utilization of Skills and Training) to assist other federal agencies to recruit and train workers who did not or could not ente the civil service through regular testing procedures. The commission in 1966 for the first time made intensive efforts to recruit personnel at black colleges. Finally, it made attempts to revise entrance examinations in order to eliminate "cultural bias."[146]

One study of black employment in the federal government,

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[145]Harvey, Black Civil Rights During the Johnson Administration, pp. 64-65.

[146]Harvey, Black Civil Rights During the Johnson Administration, p. 69.

completed in 1969, reflects progress during the Johnson Administration. In part, the study indicates that more Negroes were employed but black employees were still largely employed in the lowest paid and the most menial positions.[147]

In 1965, President Johnson issued an executive order citing the need for coordination of all parts of the federal government involved in the elimination of discrimination and the promotion of equal opportunity. Writing The Presidency and Black Civil Rights, Allan Wolk summarizes President Johnson's endeavors:

> Lyndon Johnson's Council on Equal Opportunity was the first fullfledged official unit of coordination which had specific powers and responsibilities stated in an executive order. It, however, was created reluctantly by a president who always had reservations as to its need. Its short existence was an indication that the administration preferred decentralized civil rights implementation, with White House control vested in the trusted Justice Department. This was further reflected in the delegation of Title VI coordination responsibilities to Attorney General Nicholas Katzenbach, who did not view his new duties as calling for czar-like action. Katzenbach, rather, saw the Justice Department as a moderating force which kept civil rights enforcement advancing at a steady and even speed. Thus, the Attorney General, as coordinator, did not engage in the pushing type of operation that was desired by civil rights groups, but rather assumed a more passive coordination role, one in which he used his power to keep the various departments working in tandem, and in which he tried to prevent political embarrassment for the President.[148]

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[147]Harvey, Black Civil Rights During the Johnson Administration, p. 76.

[148]Allan Wolk, The Presidency and Black Civil Rights (Madison, New Jersey: Farleigh Dickinson University Press, 1971), pp. 204-205.

On the other hand, it has been mentioned that President Johnson missed an opportunity to exercise essentially strong presidential leadership when he dismantled the vehicle for a centralized coordination of civil rights efforts. Further, it has been contended: "If he had retained that instrumentality and given it his full support there would have been much greater progress than there was in implementing civil rights."[149]

Finally, it seems safe to conclude that the Negro's struggle for equality made some progress during the Johnson presidency but not enough. Although President Johnson utilized some of his power and authority to ensure the passage of three civil rights bills, many political scientists seem to agree that Johnson gave little attention to their enforcement. Frequently, it has been observed that without persistent pressure and support from the executive branch, the bureaucracy was often unable or unwilling to fulfill the objective of legislation. Commenting specifically on the achievements of the Johnson administration, one writer notes:

> In evaluating the overall accomplishments of the Johnson administration in terms of civil rights coordination, appointment of blacks to significant positions in the federal government, black employment with the federal bureaucracy, and blacks in the armed services, one must make some

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[149]Harvey, Black Civil Rights During the Johnson Administration, p. 225.

> positive and some negative statements. As far as coordination of civil rights activities is concerned, the Johnson administration seemed to have set up the strongest mechanism in 1965, but it was abandoned within a few months. After that, efforts to coordinate were at best uneven and too much dependent upon voluntarism. Quite a number of blacks were appointed to important posts . . . but all too often they were of the "revolving door" type and had little or no real power. More blacks were hired to work in the bureaucracy than ever before, but they still held very few of the higher positions; there was still too much tokenism above the lower levels. Strides were made in desegregating the armed forces, but here too, blacks tended to be top heavy in the lower ranks and to be too heavily involved in the combat units. . . . Black servicemen still found much prejudice off base.[150]

The preceding brief history of the Negro's struggle for equality in America appears to reflect the pattern of social and political forces operating during most of the twentieth century. This information provides comprehensive views of events and issues which Thurgood Marshall felt compelled to address from 1965-1967. In this connection, Thonssen, Baird, and Braden assert: "Distinguished oratory and social crisis are closely related. . . . The stress of events associated with man's quest for freedom in civil and political life, the upsurges of patriotic fervor occasioned by man's desire to preserve his rights or to extend the influence of his power--these and other manifestations of the human will have always dominated the

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[150] Harvey, Black Civil Rights During the Johnson Administration, pp. 89-90.

scene during those periods most productive in public address."[151]

[151]Thonssen, Baird and Braden, p. 348.

CHAPTER IV

THURGOOD MARSHALL'S SPEECHES TO GENERAL AUDIENCES

This study analyzes five of Thurgood Marshall's speeches delivered between 1965 and 1967 while Marshall served as Solicitor General of the United States. These speeches were selected because they deal with the theme of equality and justice for all Americans. Also they appear to be typical of the comprehensive discussions developed by Marshall on the subject equality and justice. During this period Marshall not only directed the course of litigation for the United States, particularly cases pertaining to civil rights; but, being called upon to make speeches at universities and public conferences, occupied more of the public limelight than at any other stage of his career.[1] The five speeches may be divided into two categories: (1) those delivered to general or lay audiences and (2) those presented to law students and lawyers. The first category includes two speeches delivered 1) at the White House Conference on Civil Rights on June 1, 1966 and 2) at the Greater Indianapolis Housing Conference on June 15, 1966. The second category includes three speeches:

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[1]Randall W. Bland, Private Pressure on Public Law (Port Washington, New York: Kennikat Press, 1973), p. 143.

"The Constitution and Social Change" to the Federal Bar Association on September 16, 1965;

"Human Rights--Civil Rights: From Theory to Practice" to the University of Miami School of Law on April 27, 1966;

"Law and the Quest for Equality" to the University of Washington School of Law on March 8, 1967.

This chapter analyzes Marshall's two speeches to general audiences in terms of the following: (1) the occasion and the audience; (2) preparation, integrity of his basic ideas, and major premises; (3) the organization, identifying purpose, proposition and structure; (4) logical appeals; (5) evidence and support; (6) the emotional appeals; and (7) ethical appeal or ethos.

The Speech of June 1, 1966

Occasion and Audience

Thurgood Marshall, Solicitor General of the United States, delivered an address on the struggle for equality to about 2,500 men and women representing many facets of American life. The occasion was a "White House Conference to Fulfill These Rights" in Washington, D.C. Marshall spoke during a banquet session held on the evening of the first day of the conference. The Washington (D.C.) Post on June 1, 1966, reported: "The conference was called a year ago by President Johnson to focus on developing new means and methods to help the American Negro fulfill the rights

which, after the long time of injustice, he is finally about to secure."[2]

Some significant events preceded this conference. President Johnson called a planning session which was held November 17-18, 1965. About two hundred scholars and "practitioners in the areas of civil rights, labor, business, education, religion, and social welfare met for intensive working sessions." This group developed a comprehensive set of recommendations "reflecting a variety of viewpoints and experience." In February, 1966, President Johnson appointed a thirty-member council under the chairmanship of Ben W. Heineman, Chairman of Chicago and North Western Railway Company, that included Martin L. King, Jr., Vernon Jordan, Roy Wilkins, and other members of groups active in the civil rights movement, along with representatives from numerous major corporations. This council set the policies and supervised the detailed planning of the conference. White House staff and numerous consultants reviewed and refined the Council's recommendations and made preparation for the Conference.[3]

The White House Conference, held June 1-2, 1966, assembled, according to Heineman, "to pool knowledge,

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[2]Robert E. Baker and Jean M. White, "Civil Rights Talks Begin Here Today," Washington Post, June 1, 1966.

[3]Council's Report and Recommendations to the White House Conference (Washington: Government Printing Office, 1966), p. 2.

energy, and resources in this common cause" and represented "a significant milestone in this nation's drive to remove all remaining barriers which prevent Negro Americans from full and free participation in our society." He added that the one hundred recommendations prepared by the planning council were to serve as "our blueprint for realistic and attainable action."[4] The Conference directed its attention to four critical areas--economic security and welfare, housing, education, and administration of justice. The major goal of the Conference was to determine "immediate, practical steps to enlist in this cause the great mass of uncommitted and uninvolved Americans."[5] Vice President Hubert Humphrey addressed the conferees the morning of the first day, and Marshall spoke that evening at a banquet held in the Sheraton Hotel of Washington, D.C.

President Johnson, having called for this White House Conference, established the theme--"To Fulfill These Rights," and asserted that the object "would be to help the Negro American move beyond opportunity to achievement," and invited the 2,500 men and women in the interracial audience to attend this two-day conference. Prior to Marshall's

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[4]Major Addresses at the White House Conference "To Fulfill These Rights" (Washington: Government Printing Office, 1966), p. i.

[5]Report of the White House Conference "To Fulfill These Rights" (Washington: Government Printing Office, 1966), p. 5.

speech, President Johnson addressed the assembly and said: "Now you are here tonight from every region of this great land, from every walk of life, to play your part in this momentous undertaking and in this great adventure."[6] President Johnson, who had appointed Marshall Solicitor General of the United States and had invited Marshall to address the conference, introduced him to the audience. Accordingly, Johnson remarked that for five years he had worked to attain equal employment in federal jobs and referred to the rare nature of his introduction:

> And I am tonight going to give a good example of it [equal employment provided Negroes]. I have a very unusual pleasure and pride to introduce to you a great soldier. I might say that the President of the United States does not often have the opportunity to introduce another speaker.
>
> But I am glad that tonight I do have that opportunity. I am going to introduce to you one who 12 years ago established in the field of civil rights a beachhead from which we shall never retreat.
>
> Since that day, he has already occupied two great offices--as distinguished Justice of the Court of Appeals, and now as the great Solicitor General of the United States of America. When he accepted this call and left his lifetime job to take a temporary one in this administration, not knowing how long it would be but realizing that it offered an opportunity to serve his country, he had argued already 33 major cases before the Supreme Court.
>
> But he was really in the kindergarten class then, because before he finishes his term he will probably have argued more cases before the Supreme Court than any other American. And let no man ever say that he is not a qualified lawyer and judge.

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[6] Major Addresses at the White House Conference "To Fulfill These Rights," p. 1.

> I am proud that he serves my administration. I am very proud that his is the voice of the people of all of the United States before the highest and greatest court of this land.
>
> Nothing, I think, could be really more appropriate than that this man should speak to the first great national conference that has ever been called to really consider the rights and the opportunities of Negro Americans.
>
> Now I consider it my high honor and my very great privilege to present to you the man who has been in the forefront and will continue to be in the forefront of all battles for the things that are good for our country--Thurgood Marshall, the Solicitor General.[7]

Obviously, in his introduction President Johnson established the virtues of Marshall as a man and his authority on the topic to be discussed.

President Johnson's introduction accomplished the following: (1) for the listeners who were unfamiliar with the speaker, it provided essential information about Marshall's background and professional experiences; (2) many conferees were familiar with Marshall's personal experiences, as a black American, which he shared with interviewers for national publications, reported during frequent meetings with NAACP members, and discussed in less formal situations. Obviously, they were cognizant of his professional experiences which demonstrated his outstanding leadership in the NAACP's legal strategy, struggle, and victories in the field of civil rights; culminating in the landmark decision Brown v. Board of Education which

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[7] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 9-10.

eliminated the "separate but equal" theory of racial equality. For these hearers, Johnson's introduction probably confirmed their preconceived image of Marshall; (3) Johnson presented information about the speaker that indicated the president's close relationship with and esteem for the speaker. He related instances which stressed the appropriateness and value of Marshall's information and ideas for this particular audience. The President revealed Marshall's eminent qualifications as an authority in the area of civil rights and his competence to provide essential leadership and direction for the conference and the conferees. Therefore, it may be concluded that for the entire audience Johnson's introduction sharpened interest and established a favorable relationship between speaker and listeners.

Preparation, Integrity of Ideas and Major Premises

This section examines significant aspects of Marshall's preparation, his capacity for formulation of ideas, and his ability to determine major premises.

Preparation. Information about Marshall's activities as legal defense counsel for the NAACP and comments by persons who observed him in other speech situations during the 1950s and the 1960s provide important information about his preparation. For example, one biographer comments on Marshall's briefs for court cases: "Apparently Marshall had come to believe that the success of litigation depends

greatly upon the amount of preparatory work done before the case is brought to court. Marshall spent countless weeks and months in research, evaluating precedents, consulting with witnesses, and writing and rewriting briefs."[8] Colleagues remark that Marshall's cases and speeches were prepared with habitual thoroughness. Substantial evidence supports the fact that Marshall believed in being well-prepared when he argued a case or delivered a speech.

As legal counsel for the NAACP, Marshall frequently addressed local chapters and other groups throughout the country. Most of his speeches dealt with the struggle for equality and justice. Also, Marshall was acclaimed as a successful lawyer who devoted most of his career to the legal struggle for civil rights.[9] These factors obviously enabled him to be thoroughly familiar with his subject and with speechmaking.

Integrity of ideas. The critic must assess the speaker's capacity for formulation of ideas. Accordingly, it seems essential to review briefly pertinent factors in the life of this black American which influenced the ideas about the struggle for equal rights he composed and

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[8]Bland, p. 8.

[9]U.S., Congress, Senate, Subcommittee on the Judiciary, Nomination of Thurgood Marshall to Be Solicitor General of the United States, Hearing, 89th Congress, 1st Sess., July 29, 1965 (Washington: Government Printing Office, 1965), p. 8.

delivered. Also, Marshall's ideas are evaluated in terms of traditional rhetorical requirements.

Forces emanating from his home, schools, and legal career appear to have contributed to the development of certain skills and concepts. Evidence was presented earlier in this study. Significantly, Marshall's devotion to reading and respect for research which started at Lincoln University have been maintained throughout his adult life. Entering the private practice of law in 1933 he demonstrated skill as a trial lawyer and zest for equality and justice. As NAACP lawyer for more than two decades, Marshall participated in the struggle for human rights and dignity. For "his wise counsel and his unflagging devotion and courage"[10] as NAACP lawyer, Marshall's legal skills and dedication to the cause of civil rights were praised. Marshall served as legal counsel for the NAACP arguing numerous cases involving civil rights, including fifty-one cases before the Supreme Court [and lost only eight]. In this connection, one source reports:

> While Brown v. Board of Education was perhaps the most famous case presented to the Court during Marshall's 23 years with the NAACP and the one with the most far-reaching consequences, under his legal guidance the NAACP won several other important victories including the banning of the "white primary" in the South, the exclusion of restrictive covenants in housing and outlawing of Jim Crow restrictions in interstate travel. Many

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[10]"Marshall's Nomination Hailed by Wilkins," The Crisis, 62:559, November, 1961.

> of today's gains in civil rights might well have been impossible had it not been for the dedication and brilliant legal groundwork which he laid. . . .[11]

When Marshall was appointed to federal judgeship, NAACP Executive Secretary Roy Wilkins asserted: "The veteran civil-rights attorney . . . carries to his new position extraordinary experience in the federal courts, a wealth of knowledge of federal procedures, a breadth of understanding rare even among the country's most outstanding and successful lawyers."[12] Biographers comment that Marshall demonstrates legal ability, intellectual acumen, high code of ethic, clear reasoning, and hard work dedicated to the highest American ideals of the Constitution.[13]

Marshall's personal and professional experiences afforded him frequent encounters with violations of civil rights and racial prejudice, discrimination, and injustice. Presumably, these factors contributed to his ability to formulate egalitarian ideas, identifying crucial problems related to inequality and injustice and proposing solutions.

In this speech, Marshall seems to meet Dewey's requirements for appraising a speaker's ideas and reflective

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[11]"Thurgood Marshall . . . Uncle Sam's Lawyer," The Crisis, 66:435, August-September, 1965.

[12]"Marshall's Nomination Hailed by Wilkins," The Crisis, 62:559, November, 1961.

[13]Editorial, "Supreme Court Justice Thurgood Marshall," Negro History Bulletin, October, 1967, p. 5.

thinking.[14] Marshall's capacities can be measured as follows: (1) He recognized the problem of translating the promise of equality into reality for millions of Negro Americans as the most important problem at the moment and one that would seriously disturb the status quo. Commenting on the depth of the problem of racial prejudice and discrimination in America, Marshall implies or states that the practices and policies which have denied Negroes equality and justice for centuries represent an unwillingness to change. (2) He analyzed the nature and bearing of the problem upon the social setting. Marshall reviews the historical background of the struggle for racial equality in this country and discusses recent dramatic accomplishments "to place the present in proper prospective."[15] Marshall notes that recent progress in the area of civil rights has encountered various types of resistance but that tactics of delay and evasion could only postpone, not defeat, the victory won. He seems to imply the need to address the tremendous social challenge of conflict in the country. (3) Marshall suggests ideas relevant to a solution of the difficulty. Here, he acknowledges that recent progress in the area of civil rights represents no more than a firm base from which to

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[14] Lester Thonssen, A. Craig Baird, and Waldo W. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), p. 395.

[15] Major Addresses at the White House Conference "To Fulfill These Rights," p. 39.

launch the final attack on the causes of racial inequality and injustice. Marshall notes the role of the federal government in translating the constitutional promise of equality for every American. On the other hand, he advocates passage of more laws and stronger laws which must be vigorously enforced. Also, he recommends restudying and renewing the drive toward ending the gap between theory and practice in the area of civil rights. (4) He demonstrated acuteness in examining, through reasoning, the implications of his suggestions. Marshall seems to deal with matters which lie at the center of the issues. He uses historical facts to reveal the problem. He relates specific instances which can be considered typical to prove certain assertions. It seems that Marshall preferred to rest his important propositions on historical narrative and examples. This speech was arranged in a chronological order. Marshall's purpose for examining the past was expressed directly: "History . . . tells us how deeply rooted habits of prejudice are, dominating the minds of men and all our institutions for three centuries; and it cautions us to continue to move forward lest we fall back."[16] Frequently, narratives of the past and present dramatize values and tendencies which the listeners are already anxious to discover. Audience response to this device generally earns praise for the

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[16]Major Addresses at the White House Conference "To Fulfill These Rights," p. 40.

speaker's invention and insight. Marshall's arguments focused chiefly upon the social, moral, and political forces which allowed him to present a body of data and incidents correlated and synthesized to make his conclusions about their importance appear unquestionable to the listeners. (5) Dewey's final requirement is the verification of the speaker's judgment following acceptance of the most feasible solution. It is probably unnecessary for Marshall to meet this requirement since some rhetoricians assert:

> In general, those who wait upon ceremonial speakers are drawn from their habitual haunts by a sense of duty, a personal involvement in the occasion, a lively curiosity, or--perhaps most often--by a desire to hear a preachment upon the significance of the occasion. And the ceremonial speaker . . . is usually at liberty to view the celebrated event in its most symmetrical cosmic attitude. Listener and speaker are intent upon contemplating together the relation of the occasion to the received values honored by all parties. The celebrants may differ with those outside their bethel, but differences among themselves are usually excluded by tacit agreement.[17]

Assuming that the listeners did not add incompatible views to Marshall's message nor disregarded the information he chose to include, it is likely that they accepted his view of the case. Subsequent activities and plans by the conferees may, in part, constitute acceptance of the solution proposed by Marshall. For example, the conferees' report which was submitted to President Johnson admitted that a

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[17]Carroll C. Arnold, "George William Curtis," A History and Criticism of American Public Address, ed. Marie Kathryn Hochmuth (New York: Russell and Russell, 1955), p. 153.

broad and vigorous attack on the roots of the problem must be mounted if the nation is to meet the goal--equality as a fact and as a result not just equality as a right and a theory. It should be noted that observers report the following: "There was no complacency as they addressed themselves to their task. These meetings were charged with an atmosphere of urgency. Their conviction that despite the tremendous gains which had been made in creating a legal framework for equality, the ugly racial crisis facing the nation was quickening in momentum."[18] The conferees' report also disclosed:

> In order to achieve a common focus on specific action efforts, it was necessary to select a manageable number of areas of concentration . . . in which the results can be far-reaching.
>
> The resulting conclusion was that the Conference should direct its primary attention to four critical areas--economic security and welfare, education, housing, and administration of justice. It was also decided that there should be developed in each of these areas a limited number of specific proposals for local action to which the conferees could then commit their efforts in their own communities to actions which will achieve early important effects.
>
> The Council's Report is designed to serve these purposes. It seeks to summarize, succinctly but thoroughly, the chief problems in each subject area that deny Negroes their full share of participation in the life of the nation. It defines the broad goals that must be attained if we are to realize "not just equality as a right and a theory, but equality as a fact and a result." It details major actions that need to be taken by various elements of our society--by government at all levels; by private groups, such as business, labor, religious and voluntary organizations; and, in some

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[18] Report of the White House Conference "To Fulfill These Rights" (Washington: Government Printing Office, 1966), p. 2.

> instances, by private citizens, themselves, acting individually.
>
> Finally, the Council proposes several specific local activities in each area on which Conference participants and other public-spirited citizens may concentrate their efforts.
>
> As the Report clearly indicates, there is no intention to slight the importance of governmental action, whether Federal, state, or local. The need for additional legislation, administrative changes, and executive leadership at all three levels of government has been extensively treated; the proposals in this category and the Conference reactions to them will be transmitted to the President and will be made available to state and local public officials.
>
> But the Conference would fail in its main purpose if it did no more than that. Governmental action, however forceful and creative, cannot succeed unless it is accompanied by a mobilization of effort by private citizens and the organizations and institutions through which they express their will. Indeed, the role of government itself is in large part determined by the presence or absence of such citizen efforts.
>
> That is why the major emphasis of this Conference must be on immediate, practical steps to enlist in this cause the great mass of uncommitted, uninvolved Americans.
>
> That is why we must not end these discussions without a common resolve to return to our communities and undertake those specific actions for which our varied interests and positions best fit us.[19]

Major premises. Authorities in the field of rhetoric advise that the prospective aspect of logical analysis is furthered by determining the premises from which the speaker argued. Substantial evidence discussed earlier supports the fact that personal and professional experiences afforded Marshall frequent encounters with violations of civil rights.

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[19] Report of the White House Conference "To Fulfill These Rights," p. 5.

As a lawyer he acquired knowledge of court law, experience as the nation's foremost advocate of civil rights and a profound, almost religious, respect for the efficacy of the law. Biographers acclaim Marshall's ability to outwit, outscore, and eventually overcome forces of entrenched and organized oppression. His faith in the Constitution as a "living document"[20] was confirmed in his arguments before the Supreme Court which received an unprecedented number of favorable decisions in the struggle for equality and justice. It can be assumed that these circumstances and experiences were the sources from which Marshall drew premises presented to his listeners.

Analysis of Marshall's speech of June 1, 1966, appears to indicate the underlying assumption that every American must be guaranteed equality and justice. The speaker seems to support his position by presenting contentions with the following major premises:

(1) For centuries, Negro Americans have been denied equality and justice guaranteed white Americans.

(2) During the first three decades of the twentieth century, efforts ensure equality and justice were limited and/or ineffective.

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[20]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall of New York to Be an Associate Justice of the Supreme Court of the United States, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 49.

(3) During recent decades of the twentieth century the struggle for equality and justice has made significant progress.

(4) In the future, passage, implementation and enforcement of laws are essential to secure equality and justice for every American.

Organization

Disposition embraces the following matters: (1) the emergence of a central theme or proposition, (2) the order in which the parts of the discourse are developed and the proportioning of materials, and (3) the general method of arrangement adopted for the speech.

Thematic emergence. It seems suitable to preface the presentation of the theme of Marshall's speech to the White House Conference with a discussion of the purpose of his address. First, the fact that President Johnson invited the speaker he had appointed the first black Solicitor General of the United States who served as the people's advocate authorized to conduct and argue cases for the government before the Supreme Court, combined with his success as a people's advocate while serving as NAACP lawyer and continuing as Solicitor, Marshall represented a symbol of civil rights. Undoubtedly, President Johnson invited Marshall to speak for two reasons: to inspire and to inform. In this speech Marshall implied that his purpose was to inform; but in reality, it appears that the speaker used exposition to persuade. The information presented to support his thesis was clearly persuasive.

Marshall's theme seems to emerge in his opening statements of the speech: the present mission and future actions of those attending the White House Conference "To Fulfill These Rights" can benefit from reviewing the history of the struggle for racial equality in America. How closely Marshall follows this theme will be revealed in the section dealing with the structure of this speech.

Rhetorical proportioning and order in disposition. In this speech, Marshall followed the traditional tripartite division of introduction, body and conclusion. In terms of word distribution, the introduction consisted of approximately 260 words. This relatively short introduction seems somewhat typical for Marshall. The body of this speech contained about 2,740 words and the conclusion consists of almost 140 words.

In the introduction presumably Marshall attempted to enlist the interest and attention of the listeners. Certainly, Marshall indicated the purpose and revealed the direction his speech was going to take. For example, Marshall began his speech as follows: "My immediate task in this conference 'To Fulfill These Rights' is to place the present in the proper prospective. In order to do this I have been requested to review the historical background of the struggle for racial equality in this country." He established his thesis at the end of the third paragraph when he remarked: "History tells us how deeply rooted

habits of prejudice are, dominating the minds of men and all our institutions for three centuries; and it cautions us to continue to move forward lest we fall back." Since the preceding passages referred to the occasion, explained the purpose of the speech, stated the plan of treatment, and expressed the central idea, it can be assumed that they were effective in enlisting the interest and the attention of the audience.[21]

Often understanding the speaker's invention is aided by knowledge of the organizational pattern evident in a speech. Therefore, the following outline of the body of Marshall's speech to the White House Conference contributes to the analysis of the speaker's invention.

> Central Idea: Those of us who know the struggle is far from over history tells how deeply rooted habits of prejudice are, dominating the minds of men and all our institutions for three centuries; and it cautions us to continue to move forward lest we fall back.
>
> I. During the seventeenth, eighteenth, and nineteenth centuries, history reveals significant factors about the struggle for and denial of equality and justice for some Americans.
>
> A. During the seventeenth century Americans faced experiences that helped them define certain rights.
>
> B. During the eighteenth and nineteenth centuries, some Americans struggled to eliminate frequent abuses of slaves and denials of free Negroes' rights perpetrated by individuals, states, and branches of the federal government.

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[21] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 39-40.

II. During the first three decades of the twentieth century, history discloses additional disfranchising laws, expansion of enforced segregation, and very limited efforts by any government, federal, state, or local, to improve prevailing conditions; but the Negro began to protest and organize to alleviate these circumstances.

A. Nothing was done by any government, federal, state, or local, although there was an occasional pious declaration by the President or another high federal official to improve prevailing conditions.

B. Disenfranchising laws were multiplied, enforced segregation--once confined to a few activities and a few states--now reached farther and deeper, including the federal government which officially adopted a policy segregating government offices and the military services.

C. The few Supreme Court decisions [the first NAACP victories] in support of Negro rights were long bearing fruit, easily circumvented and did not change the Negro's status significantly.

D. Efforts of the NAACP and the Urban League to curtail legal and extralegal instances of inequality and injustice represent the only significant measures to remedy the prevailing conditions.

III. During the next two decades [1929-1948], the status quo did not change significantly but from 1948 to 1966 history reveals meaningful signs of progress in the struggle for equality.

A. From 1929 to 1948, history records the Great Depression combined with the New Deal; the federal government's thrust for fair housing; the establishment of a somewhat ineffective Civil Rights Section in the Department of Justice and a Fair Employment Practices Commission combined with the persistence and intensification of segregation by law and by policy within federal agencies which did not change the status quo significantly and did not benefit the Negro's struggle for equality dramatically.

B. During the period from 1948 to 1966, efforts of the three branches of the federal government, which revoked its discriminatory policies, reversed its stand on the insurability of homes in mixed neighborhoods, declared unconstitutional judicial enforcement of racially restrictive covenants and "separate but equal" schools, outlawed segregation in railroad dining cars and in State graduate school, declared illegal discrimination by places of public accommodation, passed the Civil Rights Acts of 1957, 1960, and 1964 and the Voting Rights Act of 1965, and undertook as never before to enforce and implement the court decisions and new laws, represent actions to translate and to fulfill the constitutional promise of equality and significant contributions to the Negro's struggle for equality.

IV. The history of the struggle for Negro rights reveals some lessons for the future.

A. Law is important in determining the condition of the Negro, whether enslavement, emancipation, disfranchisement, or equality.

B. Law--whether embodied in acts of Congress or judicial decisions--is, in some measure, a response to national opinion, and, of course, non-legal, even illegal events, can significantly affect the development of law; hence this history demonstrates the importance of getting rid of hostile laws and seeking security in new friendly laws.

C. Provided there is the determination to enforce it, law can not only provide concrete benefits but can change the hearts of some men since history makes it clear that the hearts of men do not change of themselves.

D. Evasion, intimidation, violence may sometimes defeat the best laws but they, too, can be legislated against.

E. The Negro will more readily acquiesce in his lot unless he has a legally recognized claim to a better life.

> Conclusion: I do not suggest a complacent reliance on the self-executing force of existing laws. On the contrary, I advocate more laws and stronger laws. And the passage of such laws requires untiring efforts.
> . . . we must use the present tools--not as an end, but rather as additional incentive to restudy and renew our drive toward ending the gap between theory and practice.
> Moreover, laws have only limited effect if they are not vigorously enforced. What I do say is that I have faith in the efficacy of law. Perhaps that is because I am a lawyer and not a missionary. But I think history--which proves so many things--proves me right.

In the body of this speech, Marshall presented four main contentions. Three explained historical events related to the Negro's struggle for equality and justice. The fourth contention affords directions for the future of the struggle for racial equality. The copies of the speech printed in reliable sources include the fourth contention as part of the conclusion. However, upon close examination it appears to represent part of the body of the speech.

The conclusion of this speech may be considered brief. On the other hand, it contains an appeal for acceptance and action. Marshall's concluding statements were probably effective in winning listeners to his point of view.

Method of arrangement. Marshall followed a chronological order of development. Undoubtedly, the pattern made the message easy to follow and enabled the audience to understand what was being communicated without any difficulty. Further, Marshall used internal summaries, transitions and signposts which usually achieve cohesive organization.

Logical Appeals

According to Aristotle, logical materials are the most important ingredient in a speech. Thonssen, Baird and Braden maintain that the object of analysis of logical content is the following: "To determine how fully a given speech enforces an idea; how closely that enforcement conforms to the general rules of argumentative development; and how nearly the totality of the reasoning approaches a measure of truth adequate for purposes of action."[22]

The rhetorical critic's duty is to examine and to determine the effectiveness of the speaker's arguments and the support offered to substantiate the speaker's position. This section focuses on Marshall's logical appeals.

Marshall's main ideas in the first speech can be summarized as follows:

(1) Deeply rooted habits of prejudice dominated the minds of men and all our institutions for three centuries;

(2) During the last two decades, legal actions, court decisions, executive orders, legislative acts, and concerted efforts of organized groups helped reduce racial prejudice, discrimination, and injustice;

(3) In the future, we must have more laws, stronger laws, and vigorous enforcement of laws which require that we take affirmative action toward ending the gap between theory and practice.

A study of logical proof should examine the speaker's reasoning and evidence. The validity of his reasoning can

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[22]Thonssen, Baird and Braden, p. 393.

be determined by constructing syllogisms from his main points and testing them according to the rules of logic.

Three hypothetical syllogisms can be constructed from Marshall's main points to illustrate concisely what he was trying to prove.

The first hypothetical syllogism can be stated as follows:

(Major Premise)	If racial prejudice and discrimination prevailed for three centuries, all Americans did not enjoy equality and justice.
(Minor Premise)	Racial prejudice and discrimination did prevail for three centuries.
(Conclusion)	Therefore, all Americans did not enjoy equality and justice.

The syllogism is valid because the antecedent in the major premise is affirmed by the minor premise and because the conclusion affirms the consequent.

The major premise can be considered an historic fact. It was probably accepted readily by the audience. However, the speaker probably thought that the minor premise needed proof. He presented an abundance of evidence. Marshall frequently employed specific instances and authoritative testimony to support his contentions. The nature of the illustrative examples and the source of the expert testimony differed from speech to speech. In his White House Conference speech, Marshall included details of historical events during three centuries that illustrated the prevalence of inequality. He mentioned slavery in the

South, lynchings, coerced confessions, frequent acts of violence by white mobs in the North, the "enactment of highly imaginative segregation statutes . . . to degrade an entire race of people," the legitimization of segregation by the Supreme Court when it invalidated the Civil Rights Acts of 1870, 1871, and 1875. The speaker acknowledged his indebtedness to the well-known historian, John Hope Franklin, for the historical data prior to 1900.

The second main idea can be formulated as a valid hypothetical syllogism.

(Major Premise)	If recent laws and doctrine reduce discrimination and inequality, they should be promoted and enforced vigorously.
(Minor Premise)	Recent laws and doctrine do reduce discrimination and inequality.
(Conclusion)	Therefore, they should be promoted and enforced vigorously.

Marshall probably felt the need to prove the minor premise of this syllogism. In some speeches, Marshall argued largely from specific instances of historic events--the federal government stopped discrimination in hiring; the Supreme Court outlawed segregation; passage of the Civil Rights Acts of 1957, 1960, and 1964; passage of the Voting Rights Act of 1965; and the enforcement of court decisions by the president in Little Rock and Oxford, Mississippi. He mentioned his personal experiences and victories in arguing many civil rights cases and the important Brown v. Board of Education case. He added: "Perhaps most important, the Executive Branch has undertaken as never before to enforce

and implement the court decisions and the new laws. Little Rock and Oxford, Mississippi are the most dramatic examples. But, there are countless other daily occasions when the President, the Attorney General, and the Civil Rights Division of the Department of Justice act to 'execute' the law of the land."[23]

In each speech, Marshall offered evidence that could be documented and testimony from competent authorities. It is highly probable that the audience could accept his statement.

The third main idea can be formulated as a valid syllogism also:

(Major Premise)	If equality for all Americans is to become a reality, we must take affirmative action.
(Minor Premise)	Equality for all Americans must become a reality.
(Conclusion)	Therefore, we must take affirmative action.

Marshall sought to prove the minor premise of this syllogism briefly by citing personal experiences and expert testimony.

In each hypothetical syllogism, the minor premise affirms the antecedent and the conclusion affirms the consequent. Therefore, the syllogistic reasoning is valid. The speaker employed evidence that met traditional requirements. The evidence can be considered sufficient. It is probable

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[23]Major Addresses at the White House Conference "To Fulfill These Rights," p. 52.

that the audience accepted his conclusions and was convinced by his logic and persuasion.

Close examination of this speech reveals other facts about the evidence or forms of support utilized by the speaker. For example, frequently Marshall seems to employ argument from circumstantial details. Brembeck and Howell define circumstantial detail argument as that in which numerous items not intimately related to each other by cause to effect relationships combine to form a pattern. Further, this argumentative form, derived from courtroom proceedings, is one of the most useful forms of reasoned discourse.[24] The following excerpt from the speech illustrates Marshall's use of circumstantial details:

> In 1867 some Negroes got the vote, but not all. Some got a few rights, but not all. And whenever they secured some of their rights, it took extraordinary courage--even gallantry--to exercise them. For they had little or no protection, either at the local level or from the federal government. Schools were segregated, even where Negroes had some political power. (They never had much.) People laughed when Negroes sat down in a restaurant to have a cup of coffee or when they tried to get accommodations in a hotel. The Civil Rights Act of 1875, before Congress for five years before it was finally passed, was not effectively enforced anywhere. When the Supreme Court declared it unconstitutional in 1883, few Americans took notice of it; for the Act was already a dead letter in Atlanta, San Francisco, Chicago, Washington, and New York. Responsible citizens boasted of this fact.
>
> The Fourteenth Amendment, never an effective shield for human rights, became the mechanism by

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[24]Winston Lamont Brembeck and William Smiley Howell, Persuasion: A Means of Social Control (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1952), p. 202.

> which corporate businesses took on human traits and enjoyed protection that few black human beings ever enjoyed. One southern state after another amended its constitution to disfranchise as many Negroes as possible without disfranchising, as one leader put it, a single white man. And no strong voice was raised against this blasphemy of American democratic practices.

After citing these details the speaker concluded that during this period "there was no time to consider the basic human rights, no interest in securing to all Americans equality and justice."[25] The effectiveness of this method can be measured in terms of the "cumulative effect of the list."[26]

Another illustration of the speaker's use of circumstantials detail emerges to support his contention that the goal of racial equality and justice will be fulfilled in terms of the American constitutional system:

> What is striking to me is the importance of law in determining the condition of the Negro. He was effectively enslaved, not by brute force, but by a law which declared him chattel of his master, who was given a legal right to recapture him, even in free territory. He was emancipated by law, and then disfranchised and segregated by law. And finally, he is winning equality by law.[27]

Marshall used facts and opinions to support his contention that from 1948 to 1966 progress was made toward securing equality and justice. In part, he said:

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[25] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 44-45.

[26] Brembeck and Howell, p. 202.

[27] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 52-53.

> The real march forward for the American Negro begins in 1948, first by very small steps, later by much bigger ones.
>
> In that year, the Executive Branch of the federal government officially revoked its discriminatory policies and began a slow effort to undo what it had done. The desegregation of the armed forces was undertaken. Discrimination in government hiring was ordered stopped. And FHA reversed its stand on the insurability of homes in mixed neighborhoods. So, also, in 1948--urged to do so by the first amicus curiae brief ever filed by the United States in private civil rights litigation--the Supreme Court held unconstitutional judicial enforcement of racially restrictive covenants.[28]

Rhetorical logic requires the use of evidence. Examples of the speaker's use of circumstantial details and facts and opinions to support his contentions have been presented. Assuming that the speaker's supporting materials approach completeness, the conclusion drawn is more acceptable. From these details the speaker draws conclusions which the audience can probably accept. Providing facts and opinions which approach completeness as supporting material probably enabled the audience to reach the same conclusion as the speaker reached.

Emotional Appeals

A study of emotional proof should examine how the speaker utilized appeals to the primary and secondary needs of the audience, how the speaker employed emotive and connative language, whether the emotional appeals were adjuncts

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[28]Major Addresses at the White House Conference "To Fulfill These Rights," pp. 50-51.

to reason, and whether the emotional proof moved the audience to agree or to act.[29]

Marshall employed major emotional appeals in the speeches studied: (1) appeals to individual freedom; (2) appeals to sense of justice and fair play; and (3) appeals to social responsibility.

Addressing the White House Conference "To Fulfill These Rights," it seems that Marshall appealed to the listener's respect for individual freedom when he said:

> The existence of slavery in the colonies at a time that they were fighting for their independence proved to be a serious embarrassment. It was scarcely possible to limit the great principles of freedom, stated so eloquently by Jefferson, to only white people of the emerging United States. It was an iniquitous scheme, Mrs. John Adams said, to fight for what they were daily robbing and plundering from those who had as good a right to freedom as the patriots had. In Massachusetts, Negroes insisted that they had "in common with all other men a natural and inalienable right to that freedom which the great parent of the universe hath bestowed equally on all mankind and which they had never forfeited by any compact or agreement."[30]

Marshall frequently appealed to the hearers' sense of justice and fair play. For example, he contends:

> Once the colonies gained their independence and became the United States of America, hardly a year passed that did not witness some new abuses of Negro slaves and some denial of rights even to those who had gained their freedom. . . .
>
> One might have thought that the Civil War in which scores of thousands of white Americans gave

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[29]Thonssen, Baird, and Braden, p. 432.

[30]Major Addresses at the White House Conference "To Fulfill These Rights," pp. 40-41.

> their lives and in which 186,000 Negroes fought would have settled once and for all the question of equal rights. But this was not the case. Even the most elementary rights were denied the freed men at the end of the Civil War. It mattered not how many sacrifices Negroes had made to save the Union, how many were men of education and property, how loyal they were to the finest traditions of American democracy, they had few rights that anyone was bound to respect. . . .[31]

The following passage seems to illustrate the speaker's appeal to social responsibility:

> Just as the Supreme Court decisions on the "White Primary," "Restrictive Covenants," and social segregation provided the impetus for stepped-up protests of Negroes, we must use the present tools not as an end, but, rather as additional incentive to restudy and renew our drive toward ending the gap between theory and practice.[32]

Marshall's appeal to sense of justice and fair play can be perceived in the following excerpt from this speech: "One Southern state after another amended its constitution to disfranchise as many Negroes as possible without disfranchising . . . a single white man. And no strong voice was raised against this blasphemy of American democratic practices." Continuing Marshall said:

> When the 145 Negroes assembled . . . in 1890 to organize the Afro-American League . . . they knew that they had few if any friends. . . . One thing they knew, however, and it was that they had become the custodians of America's ideals, the conservators of America's professions of equal rights. They could well have been proud of their own role as they pledged themselves "to protect against taxation; to

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[31] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 41-44.

[32] Major Addresses at the White House Conference "To Fulfill These Rights," p. 54.

> secure a more equitable distribution of school funds; to insist upon a fair and impartial trial by judge and jury; to resist by all legal and reasonable means mob and lynch law; and to insist upon the arrest and punishment of all such offenders against our legal rights.[33]

Obviously, Marshall's speeches contained some pathetic proof. In this speech as well as others, the emotional appeals presumably serve as adjuncts to reason. Most importantly, the effectiveness of the speaker's emotional proof was probably because of relationship established between noble and lofty sentiments and the interests of the audience.

Ethical Appeals

Aristotle defines the role of ethos in persuasive speaking as follows:

> The character (ethos) of the speaker is a cause of persuasion when the speech is so uttered as to make him worthy of belief; for as a rule we trust men of probity more, and more quickly about things in general, while on points outside the realm of exact knowledge, where opinion is divided, we trust them absolutely. This trust, however, should be created by the speech itself, and not left to depend upon an antecedent impression that the speaker is this or that kind of man. It is not true, as some writers on the art maintain, that the probity of the speaker contributes nothing to his persuasiveness; on the contrary, we might almost affirm that his character (ethos) is the most potent of all the means to persuasion.[34]

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[33] Major Addresses of the White House Conference "To Fulfill These Rights," p. 45.

[34] Brembeck and Howell, p. 245.

Further, Aristotle suggests three constituents of ethical proof: character, sagacity, and goodwill.

To determine Thurgood Marshall's ethical appeals, two questions should be posed. First, what reputation did the speaker bring with him to the speaking situation? Second, what did the speaker do during the speech to enhance the audience's impression of his character, sagacity, and goodwill?[35]

Several events appear to have increased materially the force of Marshall's ethical appeal. First, as chief counsel for the NAACP Marshall has been described as the "champion of Negro rights" for twenty-six years who argued thirty-two cases before the Supreme Court which resulted in twenty-nine victories, "including the 1954 school integration decision, perhaps the most famous Supreme Court decision of modern times." Secondly, after the 1954 decision "Marshall became internationally recognized in the legal profession." Thirdly, in 1960 Marshall "was invited to Britain as special advisor to the fourteen African members of the Kenya Constitutional Conference and helped to draft a constitution of Kenya writing into the documents safeguards for Kenya's white minority." Fourthly, in 1962 President Kennedy appointed Marshall to a federal judgeship which seemed to represent "that point of security and prestige toward which he had been working all his life." However, in

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[35]Brembeck and Howell, p. 258.

1965, Marshall was appointed the first black Solicitor General of the United States and "went back to a familiar occupation--arguing before the Supreme Court."[36]

Undoubtedly, the fact that the then President Lyndon B. Johnson introduced Thurgood Marshall when he addressed the White House Conference on June 1, 1966, made a favorable impression. It should be remembered that President Johnson had called for this White House Conference and established the theme--"To Fulfill These Rights." The president asserted the object of the conference "would be to help the Negro American move beyond opportunity to achievement." President Johnson had invited the 2,500 men and women in the audience to attend this conference. During his remarks to the assembly on June 1, 1966, he said: Now you are here tonight from every region of this great land, from every walk of life, to play your part in this momentous undertaking and in this great adventure."[37] Also, it is generally considered a rarity for the president to introduce a speaker. In this connection, Johnson remarks that for five years he had "worked diligently to attain equal employment in federal jobs" and refers to his appointment of Marshall as Solicitor General as an example. Noting the rare nature of his introduction and Marshall's reputation, Johnson said:

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[36]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985-A986.

[37]Major Addresses at the White House Conference "To Fulfill These Rights," p. 1.

> I have a very unusual pleasure and pride to introduce to you a great soldier. . . . I am going to introduce to you one who 12 years ago established in the field of civil rights a beachhead from which we shall never retreat. . . . I am proud that he serves my administration . . . [and] that he is the voice of the people of all the United States before the highest and greatest court of this land. . . . I consider it my high honor and very great privilege to present . . . the man who has been in the forefront and will continue to be in the forefront of battles for things that are good for our country.[38]

Presumably, most people attending the White House Conference were familiar with Marshall's concern and advocacy for minorities and those in the lower economic strata, his advocacy of freedom of expression, and his advocacy for the disfranchised as an NAACP lawyer and throughout his legal career. Marshall's highly publicized legal endeavors combined with frequent expression of his conviction that Negro Americans must be afforded equality and justice indicate that Marshall was not only the champion of the inarticulate masses but also that he believed intensely in the causes for which he spoke. In February 1966, Marshall remarked to one interviewer: "What is important is that the Negro keep impressing three things on the American conscience. One, that the Negro has had a bad shake all these years. Two, that he is entitled to a better shake. And three, that he has not partial, but complete equality."[39] Johnson's introduction

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[38] Major Addresses at the White House Conference "To Fulfill These Rights," pp. 8-9.

[39] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 3, A986.

combined with Marshall's message which embraces similar convictions probably convinces the audience the speaker is virtuous.

The Speech of June 15, 1966

Occasion and Audience

United States Representative Andrew Jacobs, Jr (D-Ind.) identifies the occasion, its sponsorship, and principal speaker when he requested permission to insert Marshall's address in the Congressional Record (June 21, 1966):

> Mr. Speaker, a housing conference was held June 14 and 15, 1966, in Indianapolis under the sponsorship of the President's Committee on Equal Opportunity in Housing and the Major's Commission on Human Rights.
>
> Principal speaker at the conference was the Honorable Thurgood Marshall, Solicitor General of the United States.[40]

In Chapter Three, it was mentioned that during this period several civil rights bills were being debated in Congress with little hope of being voted upon favorably. Specifically, fair housing was considered "the major stumbling block." In this connection, it has been noted:

> A number of civil rights leaders realized that strong opposition was likely to develop in Congress against "open" housing, and urged the president [Johnson] to extend the coverage under the executive order issued by President Kennedy in 1962. . . . Such organizations as the Americans for Democratic Action and the National Committee Against Discrimination in Housing communicated to the president

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[40]U.S., Congressional Record, 89th Cong., 2d Sess. (1966) CXII, No. 101, A3319.

> their concern that federal funds and credit were perpetuating an even increasing the amount of racially segregated housing.

Although Johnson rejected the suggestion of the civil rights leaders "allegedly on the grounds that it might raise serious constitutional questions," it was reported that on April 28, 1966, the president urged action from Congress. Regarding housing, the president requested passage of legislation as follows: "To declare national policy against racial discrimination in the sale or rental of housing, and to create remedies against that discrimination in every part of America."[41]

According to the Indianapolis Recorder, Congressman Jacobs opened the two-day conference, held at the Severin Hotel, with a speech revealing his intention to introduce before Congress a new housing bill which would prohibit the acquisition of land or construction of public works until "adequate and comparable replacement homes and churches are available to the displaced."[42] Also in attendance were Paul R. Oakes, Republican nominee for Congress for the Eleventh District of Indiana, Mayor John J. Barton and Dr. Cleo W. Blackburn.[43] Reportedly, Mayor Barton was the first to

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[41]James C. Harvey, Black Civil Rights During the Johnson Administration (Jackson, Mississippi: University and College Press of Mississippi, 1973), pp. 36-37.

[42]"Housing Expert Urges Whites to Help Others," Indianapolis Recorder, June 18, 1966.

[43]"Developer Will Be Speaker at Housing Conference," Indianapolis Star, June 16, 1966.

initiate substantial measures to ensure adequate housing for all.[44] Dr. Blackburn, executive director of the Board for Fundamental Education and Flanner House[45]--the only low income housing project in Indianapolis in 1966--was considered a pioneer in housing programs[46] having developed programs not only in Indianapolis but throughout the eastern part of the country.[47] Specifically, the Indianapolis Star reports that "Thurgood Marshall, Solicitor General of the United States, spoke at a noon luncheon attended by more than 450 persons."[48] Indianapolis newspapers also identified the "interracial audience"[49] as representatives of government, including social service agencies, business, and religious organizations assembled to discuss "critical local housing problems and plans for more decent low-income housing."[50]

Earlier in this study, Marshall's commitment and success as an advocate of equality and justice for all Americans throughout his legal career were documented

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[44]Based on conversation between Nellie Gustason and the author, October 17, 1978.

[45]Indianapolis Recorder, June 18, 1966.

[46]Based on conversation between T. C. Vaughn, Director of the Greater Indianapolis Housing Commission, and the author, September 29, 1978.

[47]Indianapolis Recorder, June 18, 1966.

[48]Indianapolis Star, June 14, 1966.

[49]Indianapolis Recorder, June 18, 1966.

[50]Indianapolis Star, June 14, 1966.

substantially. Regarding the matter of discrimination in housing, several facts seem pertinent. At this point, it seems pertinent to mention Marshall's involvement in the area of fair housing.

As Director-Counsel of the NAACP, Marshall participated in a vigorous legal attack against restrictive covenants from 1945 until he left this position. Also, Marshall suggested that the NAACP create a staff position devoted to the area of housing.[51]

Prior to Marshall's address before the "Greater Indianapolis Housing Conference of Adequate Housing for All," his endeavors to eliminate discrimination in housing had been widely publicized and generally applauded. For example, in one interview Marshall said:

> What we must have, and will have eventually, is total integration, of schools, housing, the power structure, everything. . . . Not until you have young people growing up together on an equal basis from the start are you going to have real acceptance. It is too late to do that for most of the present generation of children but we can try to do it for the next.
>
> Take for example, the cooperative apartment house we live in in New York. There were whites, Negroes, Catholics, Jews, Orientals, every group--all living side by side and there was never an incident. Now those children have a pretty good chance of growing up without prejudice.[52]

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[51]Clement E. Vose, Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases (Berkeley: University of California Press, 1959), p. 64.

[52]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A986.

As Solicitor General of the United States, Marshall continued to argue cases dealing with civil rights in general and racial or housing discrimination in particular. For example, Reitman v. Mulkey case challenged the validity of provision in the California constitution, prohibiting the state or any of its subdivisions or agencies from enacting "open or fair housing statutes." When the case reached the Supreme Court of the United States, Solicitor General Marshall presented the government's position. Marshall argued that the amendment had made the state a guilty partner in a discriminatory act since it freed the citizens of California from the restraints of not only the Unruh Act which prohibited racial discrimination in all places of business accommodation, but also of other statutes which had been enacted to end racial discrimination in housing. The Supreme Court of the United States agreed after hearing the government's position.[53] The man the audience came to hear had been highly praised as "a man whose work has symbolized and spearheaded the struggle of millions of Americans for equality before the law."[54] With the preceding in mind, one can understand why Marshall was selected as the person to address the Indianapolis Housing Conference.

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[53] Bland, p. 137.

[54] U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 2.

Basic Ideas and Major Premises

This section focuses on pertinent factors that contributed to Marshall's storehouse of knowledge regarding housing problems and enabled him to determine certain major premises.

Integrity of ideas. The numerous forces which influenced Marshall's ideas about racial inequality and injustice, in general, have been discussed earlier. At this point, it seems appropriate to mention some of Marshall's previous experiences related to housing problems which he brought to the speech situation in Indianapolis.

In this connection, during the 1940s and 1950s Marshall was actively involved in struggle against restrictive covenants which have been described as "the most clear cut legal device for segregating neighborhoods."[55] For example, in 1945, the NAACP called a national conference on the matter of housing and launched a vigorous attack against restrictive covenants in the courts. During the conference, as Director-Counsel, Marshall discussed legal strategies: "The objective, explained Marshall, was to develop causes by which the constitutionality of the enforcement of racial contracts could be successfully challenged before the Supreme Court of the United States. . . . Every aspect of the techniques of attacking restrictive covenants was

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[55]Jack Greenberg, Race Relations and American Law (New York: Columbia University Press, 1959), p. 279.

discussed." Following the conference, it has been reported that Marshall announced that the NAACP and its lawyers would place special emphasis on the fight against restrictive covenants. Also, Marshall declared the NAACP's commitment to a propoganda crusade against "the evils of segregation and racial restrictive covenants" and suggested the creation of a staff position devoted to the area of housing.[56]

In 1947, eighteen Negro leaders including Marshall held a second conference on housing and decided to use sociological and economic support in the fight against restrictive covenants when the next case was argued before the Supreme Court. Commenting on the inevitable decision of NAACP lawyers to rely on sociological and economic material as a principal point in litigation involving such cases, it has been noted: "Marshall . . . [was] impressed with the growing number of articles and other publications showing the disastrous sociological and economic effects of not only racially segregated housing but racial segregation per se. Since Marshall was already making use of social theories in two cases involving higher education . . ., he was predisposed to the doctrine."[57]

Of some importance is Marshall's participation in cases involving discrimination and segregation in housing. For example, in McGhee v. Sipes it has been reported:

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[56]Bland, pp. 49-50. [57]Bland, pp. 50-51.

> The question presented to the Supreme Court of the United States by Marshall and [Loren] Miller, both in brief and in oral argument, was predicated on the facts involved in the case: "Does the enforcement by state courts of an agreement restricting the disposition of land by prohibiting its use and occupancy by members of unpopular minority groups, where neither the willing seller nor the willing purchaser was a party to the agreement imposing the restriction, violate the Fourteenth Amendment and treaty obligations under the United Nations Charter?"[58]

Specific information about the nature of the brief for the McGhee case reveals the following:

> The authors [Marshall and Miller] of the brief . . . devoted thirty-eight pages to a discussion of the damaging effects on unpopular minorities because of these agreements. Using data extracted from the Bureau of Census figures and Special Census, Race, Sex by Census Trace, they analyzed the problems of overcrowding and of deteriorated dwellings. They cited such findings as revealed in Britton, "New Light on the Relations of Housing to Health," in the American Journal of Public Health (1942); Hyde and Chisholm, "Relations of Mental Disorders to Race and Nationality," in New England Journal of Medicine (1944); Cooper, "The Frustration of Being a Member of a Minority Group," in Mental Hygiene 29 (1945); and Farris and Dunham, Mental Disorders in Urban Areas: An Ecological Study of Schizophrenia and Other Psychoses (1939). In this way Marshall and Miller attempted to link the unsanitary conditions of the ghetto with ill health. Moreover, they contended, the perpetuation of slum areas amounted to greater costs for the whole community in prejudice, hostility, and racial tension. The Negro lawyers pointed to an argument presented in Gunnar Myrdal's An American Dilemma, a recent study of American race relations conducted by a Swedish sociologist, "that in many northern states . . . there is partial segregation aided by the gerrymandering of school districts." Referring to an article by Robert Weaver, the advocates . . . concluded that the inevitable result of such redistricting: "As Negroes are relegated . . . to physically

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[58]Bland, p. 54.

> undesirable areas . . . they are associated with blight . . . are all believed to be undesirable, and their perpetual and universal banishment to the ghetto is defended on the basis of racial characteristics."[59]

Marshall included similar ideas in his June 15, 1966 speech. For instance, he supports his contention that the perpetuation of ghetto costs greatly. In part, he said: "It imposes a social and moral cost beyond measure; it assesses a financial cost of physical maintenance and social and public service which must be calculated not in the millions but in the billions."[60]

Marshall's conclusion in McGhee v. Sipes contained ideas which he reiterated before the Indianapolis Housing Conference in 1966:

> This case is not a matter of enforcing an isolated private agreement. It is a test as to whether we will have a united nation or a nation divided into areas and ghettos solely on racial or religious lines. To strike down the walls of these state court imposed ghettos will simply allow a flexible way of life to develop in which each individual will be able to live, work, and raise his family as a free American.[61]

Addressing the thirty-ninth Annual NAACP Conference in Kansas City, Missouri, June 23, 1948, Marshall's topic was "Restrictive Covenants and the Segregation Picture."

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[59]Bland, p. 56.

[60]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

[61]Bland, p. 57.

He quoted, in part, the Supreme Court's unanimous decision in McGhee case:

> Freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in these cases is clear. Because of the race or color of these petitioners they have been denied rights of ownership or occupancy enjoyed as a matter of course by other citizens of different race or color.

Marshall continued as follows:

> This statement sums up a big victory in a long fight against segregated housing. It did not and will not of itself destroy segregated housing. It is our job to protect the effect of this decision and to push forward toward the total destruction of not only segregation in housing but all forms of segregation in American life. Thirty years ago we won another victory in the Supreme Court which declared unconstitutional a city ordinance in Louisville which required racial segregation in housing. Ever since that time we have been battling various devices by which white supremacists have sought to evade that decision. Restrictive covenants were the final, most workable and most prevalent device which formed the cornerstone of the ghetto for the Negro and the Jew, the Mexican and the Oriental. Indeed, for every minority to whom some Americans would deny democracy.[62]

Discussing the nature and scope of racial segregation, Marshall comments on the housing problem: "A shortage of adequate housing, and I mean unsegregated housing, for all American citizens raises a crucial problem. . . . Racial segregation is inextricably tied up with every single problem that you can name. No economic, political or social reforms

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[62]Thurgood Marshall, "Restrictive Covenants and the Segregation Picture" (Address before the thirty-ninth annual conference of the National Association for the Advancement of Colored People, Kansas City, Missouri, June, 1948), p. 1.

directed at any one of these problems can be effective so long as segregation exists." Regarding the solution for the problem of segregation, Marshall asserts:

> There is no single easy solution to this problem. It will not be solved solely by any court decision . . . by any act of Congress . . . by the act of any State Legislature . . . by any resolutions by this or any single organization, public or private.
>
> This problem will only be solved by all of these actions plus a climate of opinion throughout this country in favor of full citizenship for every American regardless of race, creed or color. It will not be solved until the day comes when prefixes to the word "American" are removed by court decision, by statute and from the thinking of all American citizens.[63]

In 1953, NAACP lawyers participated in another restrictive covenant case--Barrows v. Jackson. Marshall assisted in the preparation of the brief. Although Miller argued this case before the Supreme Court of the United States, it should be added that the argumentation repeated much of that contributed by Marshall and Miller in the McGhee case. The NAACP lawyers received another favorable decision from the Supreme Court. Further, it has been noted:

> The Restrictive Covenant Cases proved to the legal arm of the NAACP that utilization of multigroup support through amici curiae briefs and other forms of group pressure on concerned federal agencies was an invaluable asset. Essential to the success of this strategy was the fact that for the first time in a private suit the federal government had submitted a brief friendly to the Negro cause.[64]

In the 1960s, Solicitor General Thurgood Marshall argued many civil rights cases before the Supreme Court. In

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[63]Bland, pp. 11-12.

[64]Bland, p. 60.

particular, he argued cases involving racial discrimination in housing. For example, in the Reitman v. Mulkey case Marshall, as amicus curiae, presented the government's position, which, in part, held that the amendment to the California constitution which prohibited the state or any of its agencies to enact open or fair housing statutes made the state a guilty partner in a discriminatory act since it freed citizens of California from statutes which had been enacted to end racial discrimination in housing. Subsequently, the Supreme Court agreed with Marshall that California Supreme Court's decision that the amendment violated the equal-protection clause must be upheld.[65]

Reliable sources agree that the intensive preparation and exceptional strategy contributed to the legal victories of Marshall and his associates in the restrictive covenant cases. For example, in a book about Marshall's legal career, Bland writes: "The success of the [NAACP legal staff] in the Restrictive Covenant Cases supported its long-practiced strategy of lengthy, legal preparations, exposing arguments before moot courts of interested law schools . . . and soliciting the finest professional talent."[66] Also, commenting on the activities of Marshall and his staff in the development of these cases, Clement E. Vose remarks:

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[65]Bland, p. 137. [66]Bland, p. 60.

> Analysis of the Negro victory in the Restrictive Covenant Cases forces the conclusion that this result was an outgrowth of complex group activity which preceded it. Groups with antagonistic interests appeared before the Supreme Court, just as they do in Congress and other institutions that mold public policy. Because of organization the lawyers for the Negroes were better prepared to do battle through the courts. Without this . . . they would not have freed themselves from the limiting effects of racial covenants, notwithstanding the presence of favorable social theories, political circumstances, and the Supreme Court justices.[67]

Major premises. After discussing the factors which contributed to the shaping of Marshall's basic philosophy and concepts, it seems desirable to examine the major premises presented in Indianapolis. The factors discussed in the previous section probably enabled Marshall to select appropriate premises for his speech of June 15, 1966. Upon close examination of this speech, the following premises appear to emerge:

(1) The impact of urban housing problems extends beyond the immediate residents.

(2) Ensuring adequate housing for all Americans requires community and national commitment and program.

(3) To remove conditions which require certain people to live in the ghetto involuntarily, we must attain certain prerequisites in terms of program and policy and their implementation.

In this speech Marshall's premises focus on housing as a specific area of racial discrimination. On the other hand, they seem consistent with arguments dealing with

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[67]Vose, p. 252.

racial segregation and discrimination in other areas. Further, these contentions were most likely acceptable to most of his listeners in principle if not in practice. It seems that these contentions support Marshall's position and could lead to the desired responses from his many, if not all, of his hearers.

Marshall's years of experience as a trial lawyer and public speaker, his thorough knowledge of racial segregation and discrimination, and his acclaimed reputation for unparalleled skill in determining legal strategy to solve problems related to racial segregation and discrimination apparently qualify him as a well-known and highly respected authority on the subject discussed with his audience. These factors, among others, enabled Marshall to know the significance of various ideas and their probable effects on the audience. Further, he seems to know the audience's present state of mind, its knowledge of the subject, and its awareness of opposing ideas. Possessing a broad understanding of the aforementioned matters, presumably Marshall can select the best possible strategic ideas.

Organization

Disposition will be examined in terms of the speaker's purpose, the emergence of a central theme or proposition, and the general method of arrangement adopted for the speech.

The speaker's purpose. Marshall's purpose before the Greater Indianapolis Housing Conference appears to be twofold: (1) to increase the hearers' knowledge or to inform the members of the audience assembled to confront housing problems "head-on" and (2) to convince the listeners to adopt a specific attitude toward his proposition and to take action on it. The speaker seems to indicate his purpose and to provide a preview of his discussion in the following passage: "While this conference cannot produce an absolute unanimity of view, it can define with some precision the true and real nature of the area's housing situation, and, hopefully, point the way toward a community-wide attack on the problems that do exist."[68] Marshall's purpose can be considered audience-oriented.

The emergence of a proposition. In this address, Marshall seems to imply the following proposition: Persistent segregation and discrimination in the area of housing violate the rights of many Americans and perpetuate a divided society.

Structure of the speech. The introduction, body, and conclusion of this speech are discernible as the major divisions of this speech. The length of the introduction presented in Indianapolis is similar to that presented about

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[68]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

two weeks earlier in Washington, D.C. The introduction consists of approximately 265 words. Perhaps, more importantly, the content of this introduction probably enlisted favorable attention, promoted friendliness and respect, indicated the speaker's knowledge of the various attitudes of his hearers, and established common ground while indicating purpose and previewing the direction his discussion will take. For example, Marshall said:

> I am grateful to all of you here today, not simply for the courtesy of your invitation to participate in this conference but, far more important, for your willingness to confront the housing problems of the Greater Indianapolis community head-on.
>
> I suspect that there are here, as in other areas through the country, varying and divergent assessments about housing--its adequacy, its ready accessibility by all, its character and its quality.
>
> There are those, I am sure, who see no real need for concern about the situation, who believe that things, in total, are not too bad at all.
>
> Then, at the opposite end of the spectrum, there are those who are convinced we face a crisis in housing, that it constitutes one of the most serious shortcomings of our economy and our society.
>
> And finally, there is that sizeable middle group who haven't given the matter much attention or thought, those who are relatively satisfied and at ease with their own lot and find it difficult to involve themselves in problems that may affect others but which don't, they feel certain, have any broader or more pressing impact.
>
> While this conference cannot produce an absolute unanimity of view, it can define with some precision the true and real nature of the area's housing situation, and, hopefully, point the way toward a community-wide attack on the problems that do exist.[69]

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[69]Ibid.

This introduction fulfills rhetorical requirements in terms of gaining attention, securing goodwill, and preparing the audience to understand the discussion which follows. Also, it probably paves the way for acceptance of the speaker's implied position that widespread urban housing problems must be solved. Marshall seems to imply that segregation and discrimination in the area of housing which deny adequate housing and suitable environment for millions of Americans must be eliminated.

Marshall employs the problem-solution method for developing the body of this speech. This approach is generally considered an appropriate design for an indirect argument. Accordingly, part one presents an analysis of the problem and part two deals with determining solution.

In terms of word distribution, the discussion contains approximately 1,275 words. The following brief outline illustrates the speaker's invention:

I. Urban housing problems . . . are not isolated to just a few communities; they are, in hard and unpleasant fact, a challenging and dangerous characteristic of urban America, North as well as South, West as well as East.

   A. The scope and dimension of these problems make them a matter of interest and concern whose impact goes beyond those who personally suffer the inadequacies, day in and day out.

   B. Housing--and specifically the lack of adequate housing--is a community problem, an American problem.

II. [We must meet this problem in several ways.]

A. Commitment of community and nation must be developed to ensure guarantees with the Housing Act of 1949.

B. We must dissolve the ghetto by removal of conditions which require certain people to live in it involuntarily.

C. We must establish certain pre-requisites in terms of program and policy and their implementation.

D. Everyone must share the responsibility.

Most listeners were probably acquainted with Marshall's background. In such situations, the speaker may need only to confirm his reputation by the materials used and the confidence demonstrated in the presentation of his ideas. The forms of support Marshall used will be covered later in this study.

Marshall builds a good case and concludes this speech by reiterating his central idea and with a plea for action. Accordingly, the speaker seems to focus the thought of his audience on his central idea and openly appeals for belief and action. In concluding, Marshall says:

> We are left, therefore, with the massive and urgent task of correcting the problem, of overcoming the obstacles, of righting wrong we have permitted to develop and grow.
>
> As hard as the work admittedly will be, it must be done, and in the doing we have made a last contribution toward fulfilling the American purpose and redeeming the American promise.
>
> There is no higher function of citizenship than that.
>
> Let us determine to perform it with wisdom and persistence, for the good of us all.[70]

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[70] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3320.

In this connection, perhaps it should be mentioned that some authorities in the field of speech have noted: "If you have a good case for your proposition you have won the right to ask your audience to share your beliefs and act upon them. You do your case an injustice if you fail to enlist the interests and emotions of your listeners."[71]

Logical Appeals

Marshall's speech to persons attending the "Greater Indianapolis Conference on Housing for All" focused on one specific and crucial aspect of discrimination and inequality; i.e., housing, whereas his other speeches dealt with numerous areas of inequality and injustice experienced by Negroes.

Marshall's main ideas summarized in the preceding section may be cast into the form of the following hypothetical syllogisms:

(Major Premise)	If the scope of urban housing problems extends beyond the immediate residents, it becomes a problem of the community and of the nation.
(Minor Premise)	The scope of urban housing problems extends beyond the immediate residents.
(Conclusion)	It becomes a community problem.
(Major Premise)	If segregated and inadequate housing is to be eliminated, community and national commitment and program are required.

[71]James H. McBurney and Ernest J. Wrage, Guide to Good Speech (2d ed.; Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1960), p. 89.

(Minor Premise)	Segregated and inadequate housing must be eliminated.
(Conclusion)	Therefore, community and national commitment and program are required.

The syllogistic reasoning is valid since in each instance the minor premise affirms the antecedent and the conclusion affirms the consequent. Marshall's logical proof apparently demonstrates sound reasoning and convincing conclusions drawn from acceptable premises.

Characteristics of the speaker's forms of support should be discussed. The logical proof in Marshall's speech before the Indianapolis Housing Conference depended largely upon the speaker's personal and professional knowledge and experiences as the major source of evidence. For example, the speaker supported his minor premise about the nature and scope of urban housing problems by using assertions:

> Urban housing problems, unfortunately enough, are not isolated to just a few communities; they are, in hard and unpleasant fact, a challenging and dangerous characteristic of urban America, North as well as South, West as well as East.
>
> And it should be plainly evident that the scope and dimension of these problems make them a matter of interest and concern whose impact goes far beyond those who personally suffer the inadequacies, day in and day out.
>
> It is not a problem just of the poor, although its effect on this economic group is a direct and telling one.
>
> It is not a problem just of the Negro American although, once again, he is affected more severely than most of his fellow citizens.
>
> It is not a problem of a particular religious or nationality group, although some of these have

> more intimate knowledge of housing inadequacies than do others more fortunate.
>
> Housing--and specifically the lack of adequate housing--is a community problem, an American problem.[72]

Keeping in mind that Marshall was considered an expert authority on the subject, his assertions probably were sufficient for audience acceptance of his conclusions. Presumably, these assertions clarified and explained his contention.

Apparently, Marshall was not content to rest his conclusion solely upon assertions. He continued with supporting materials which consisted of statements of fact, definition and opinion:

> The Congress of the United States, in the Housing Act of 1949, declared the national housing policy to be "a decent home and a suitable living environment for every American family."
>
> As to terms, I am certain most people could reach a common understanding as to what "decent home" should be. Yet ten million Americans live in dwellings that are substandard and therefore are denied the decency of housing which the 1949 Housing Act solemnly pledged.
>
> But shortcomings of promise and performance--between goal and reality--become markedly more severe when we get to the point of "a suitable living environment" which is also pledged for every American family.[73]

Marshall's supporting materials explain and clarify his main idea. Further, many listeners probably shared his belief and did not need additional evidence to arrive at the conclusion drawn.

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[72] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

[73] Ibid.

In this speech Marshall employs argument by alternation to some extent. The speaker devoted a great proportion of his speech to the demonstration of the practicality of the solution he proposed for the elimination of discrimination and segregation in the area of housing. First, he asserted that this "requires the eventual dissolution of the ghetto, not necessarily its total physical destruction, but conditions which require certain people to live in it involuntarily." Continuing he said to accomplish that, "we must attain certain pre-requisites in terms of program and policy and their implementation." Then Marshall proceeds to outline and explain these factors. Following the explanation of his plan, the speaker said:

> We cannot delude ourselves by oversimplifying the complexity of the work to be done or in underestimating the difficulties we will encounter.
>
> The alternative to facing up to that complexity and those difficulties, however, is even more burdensome, because it would be a program of inaction which is fraught with terrible danger to our economy, our society, and our national conscience.
>
> It would be wrong--tragically, destructively wrong.
>
> It seems clear to me there is no alternative in the true spirit of the word.[74]

On the one hand, this illustration indicates that Marshall did not present the alternatives comprehensively. On the other hand, it seems likely that this audience of people assembled to find solutions to urban housing problems

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[74]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319-A3320.

would not need further evidence regarding the alternatives. Further the listeners were probably most interested in the details of Marshall's recommendations since his life and career had been devoted to solving problems related to discrimination and segregation not only in the area of housing but in other areas as well. Presumably, these factors earned respect for, if not complete acceptance of, Marshall's conclusion.

Emotional Appeals

In Marshall's speech at the Indianapolis Housing Conference, one finds evidence of Marshall's appeals to patriotism. For instance, Marshall says: "Housing--and specifically the lack of adequate housing--is a community problem, an American problem."[75] Also, appealing to both patriotism and social responsibility, Marshall comments:

> We are left, therefore, with the massive and urgent task of correcting the problem, of overcoming the obstacles, of righting the wrong we have permitted to develop and grow.
>
> As hard as the work admittedly will be, it must be done, and in the doing we will have made a lasting contribution toward fulfilling the American purpose and redeeming the American promise.
>
> There is no higher function of citizenship than that.
>
> Let us determine to perform it with wisdom and persistence, for the good of us all.[76]

Speaking to the Indianapolis Housing Conference, Marshall

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[75] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

[76] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3320.

also appeals to the sense of social responsibility. After he enumerates the essential requirements to attain adequate housing for all, Marshall said:

> If we are to succeed in this effort, we face staggering tasks and massive obligations. And I am in no way underestimating the role or absolving the Federal Government's responsibility when I say that the solution to this problem of housing rests not with Washington alone. It is shared by State and local governments, by business and labor, by fair housing groups and other community action agencies, by religious and civil rights organizations, by those now isolated in the ghettos and, most assuredly, by those who now enjoy the foolish luxury of ignoring them.
>
> But if we do that job, it will be effort and expenditure put to constructive use and devoted to a healthful purpose, as compared to the vast costs, in both time and money, which are now ploughed into the divided society and the separate worlds of today. That is the kind of cost we can no longer afford, either in dollars or in depressed human values.[77]

Marshall employed emotional proof to reinforce reason. Evidence supports the fact that many of his listeners shared his beliefs and attitudes. He provided the audience with adequate motives for action. Many rhetoricians maintain that audiences are moved to action by emotional appeals and that proposals identified with emotional appeals have been effective in securing their acceptance. It seems likely that Marshall's emotional appeals helped gain acceptance of his arguments. Hence, his use of emotional appeal probably contributed to the overall effectiveness of Marshall's speeches.

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[77]U.S., Congressional Record, 89th Cong. 2d Sess. (1966), CXII, No. 101, A3319.

Ethical Appeals

Marshall was probably invited to speak on this and similar occasions because of the reputation he had established as a leading advocate of civil rights and human rights, as the constitutional lawyer whose superior strategy and skill resulted in a large number of legal victories, particularly in the area of civil rights, and as the NAACP Director-Counsel who frequently addressed NAACP members and other groups helping them to determine the nature and scope of specific problems involving racial segregation and discrimination and providing practical solutions to reduce or to eliminate the problem. This favorable reputation was a major advantage to the speaker in his efforts to convince or actuate his audience.

Prior to Marshall's address before the "Greater Indianapolis Housing Conference of Adequate Housing for All," his endeavors to eliminate discrimination in housing had been publicized and generally applauded. For example, in one interview Marshall said:

> What we must have, and will have eventually, is total integration, of schools, housing, the power structure, everything. . . . Not until you have young people growing up together on an equal basis from the start are you going to have real acceptance. It is too late to do that for most of the present generation of children but we can try to do it for the next.
>
> Take for example, the cooperative apartment house we live in in New York. There were whites, Negroes, Catholics, Jews, Orientals, every group--all living side by side and there was never an incident.

> Now those children have a pretty good chance of growing up without prejudice.[78]

Also, as an NAACP lawyer and as Solicitor General Marshall had sought relentlessly to ensure equality and justice for all Americans. Further, Marshall had been publicly acclaimed the voice of the American Conscience. It seems that these factors, among others, sufficiently establish the probity of Marshall's character and probably predisposed the audience to give the speaker respectful attention when he spoke.

Evidence of Marshall's use of ethical proof as a means of persuasion can be perceived in his ability to establish character, sagacity and good will while he spoke.

Previous discussion indicates that it was probably not necessary for the speaker to convince the audience of his virtue. Obviously, most listeners admired these qualities before the occasion of the speech. However, the probity of Marshall's character was strengthened during the address since the speaker relied upon authority largely derived from his personal experience which has been mentioned earlier.

Generally, Marshall established sagacity in discourse since he revealed a broad familiarity with the interests of his audience. For example, the speaker said:

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[78]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A986.

> The Congress of the United States, in the Housing Act of 1949, declared the national housing policy to be "a decent home and a suitable living environment for every American family."
>
> If that purpose were to be achieved, I am convinced most of us would agree that we would have met the goal of adequate housing.
>
> But we must be sure of our terms and creative and perservering in developing the means and the responsibility for establishing needed programs and implementing them into reality.[79]

During this speech, Marshall also established good will by discovering common ground between himself and his audience. For instance, he noted:

> If we are to succeed in this effort, we face staggering tasks and massive obligations. . . .
>
> But if we are to do that job, it will be effort and expenditure put to constructive use and devoted to a healthful purpose, as compared to the vast costs, in both time and money, which are ploughed into the divided society. . . . That is the kind of cost we can no longer afford, either in dollars or in depressed human values.
>
> We have made some progress. . . .
>
> But we cannot delude ourselves. . . .
>
> We are left, therefore, with the massive and urgent task of correcting the problem, of overcoming the obstacle, or righting the wrong we have permitted to develop and grow.
>
> Let us determine to perform it with wisdom and persistence, for the good of us all.[80]

Another example illustrates Marshall's practice of mentioning goals and beliefs common to himself and his audience: "We face a crisis in housing . . . [which] constitutes one of

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[79] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

[80] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319-A3320.

the most serious shortcomings of our economy and our society."[81]

While Marshall spoke the probity of his character, sagacity, and good will were strengthened. These examples of the speaker's ethical appeal seem to conform to rhetorical standards.

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[81]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

CHAPTER V

THURGOOD MARSHALL'S SPEECHES TO LAWYERS AND LAW STUDENTS

This chapter analyzes three speeches delivered by Thurgood Marshall to law students and lawyers during his tenure as Solicitor General of the United States. These speeches will be appraised in terms of the following: (1) the occasion and the audience; (2) the speaker's preparation, integrity of his basic ideas, and his major premises; (3) the organization, identifying purpose, proposition of central idea and structure; (4) characteristics of the speaker's logical appeals; (5) forms of evidence and support; (6) the speaker's emotional appeals; and (7) the speaker's ethical appeal or ethos.

The Speech of September 16, 1965

Occasion and Audience

Thurgood Marshall's address, "The Constitution and Social Change" was delivered during the 1965 Federal Bar Association (FBA) Convention held at the Conrad Hilton Hotel in Chicago Illinois September 15-18, 1965. The FBA Convention theme was "The Great Society."[1]

[1]Margaret Pallansch, "Chicago Convention Preview," Federal Bar News, July, 1965, p. 224.

It should be mentioned that this speech represents Marshall's first major address as Solicitor General. Marshall spoke "to a truly overflow crowd of 450" persons assembled for "the September 16 lead-off luncheon" entrusted to the YLC [Younger Lawyers Committee], "an honor bestowed for the third successive year." Regarding this occasion, the Federal Bar News reports that the "program reaches new high" and continues:

> The Sixth Anniversary of the Younger Lawyers Committee celebrated at the FBA Annual Convention in Chicago was a successful and appropriate conclusion to the year of leadership by retiring YLC Co-Chairmen. . . . Combining to make this year's YLC Convention activities reach a new mark were elements such as a luncheon program which had record attendance for the first address of the Solicitor General of the United States since coming to his new office, . . . and a warm reception for a leading program designed to bring the message of the Bill of Rights into classrooms.[2]

Other factors about the occasion seem important. According to Michael Waris, Jr., Program Chairman of the 1965 FBA Convention, "subjects and speakers . . . will deal with all varieties of new problems confronting the lawyer in today's world."[3] In an article published in Federal Bar News prior to the convention Varjan Staniec, Vice Chairman of Publicity and Promotion Committee, wrote that the "Great Society" Convention was shaping-up to be an SRO Success,

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[2]J. Thomas Rouland and Joseph Fontana, "Convention Program Reaches New High," Federal Bar News, October, 1965, p. 338.

[3]Pallansch, p. 224.

while announcing that many "headline" political, professional, and government figures will have active convention roles and naming, among others, The Honorable Abe Fortas, Associate Justice of the United States Supreme Court and The Honorable Thurgood Marshall, Solicitor General of the United States, as persons they would be "honored and privileged to have with them."[4]

Presumably, any discussion about the general nature of the audience should include some pertinent facts about the organization with which they were affiliated. Accordingly, the FBA, established in 1920 in Washington, D.C., is an association of members of the Federal Judiciary and of lawyers who are or have been in the employ of the United States Government in legal capacities.[5] In 1965, the FBA had a membership about one-tenth the size of the American Bar Association which had 119,000 members.[6] Approximately 87 chapters, four of which were in European cities, were affiliated with the FBA.[7] According to the Federal Bar News, a publication forwarded to each member, the purposes

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[4]Marjan Staniec, "'Great Society' Convention Shaping-Up to Be an SRO Success," Federal Bar News, August, 1965, p. 255.

[5]"The Federal Bar Association," Federal Bar News, September, 1965, p. 281.

[6]"President's Page," Federal Bar News, December, 1965, p. 388.

[7]Sylvester A. Puzio, "Campaign to Establish New Chapters of the Federal Bar Association," Federal Bar News, May, 1966, p. 156.

of the FBA in part are as follows:

> To advance the science of jurisprudence; to promote the administration of justice; to uphold a high standard for the Federal Judiciary, attorneys representing the Government of the United States, and attorneys appearing before courts, departments, and agencies of the United States. . . .
>
> The legal business of the Government would be expedited with resultant benefits to the public were federal lawyers and private practitioners brought into closer relationship. Effective means for bringing this about is through wide membership in the Federal Bar Association by private practitioners who are eligible by reason of their former service as a federal judge or as a civil or military employee or official of the Federal or District of Columbia Governments and by those attorneys presently employed by these governments.[8]

Other characteristics of this audience can be perceived from remarks made by other speakers. For example, Phillip F. Ziedman, General Counsel of the Small Business Administration (SBA) and at the age of 31 the youngest general counsel in the federal government, accepted an award during the luncheon program and included the following comparison of lawyers employed by the federal government and those who are not:

> We have each chosen . . . to serve the Government of the United States. Our abilities and our energies, our origins and our prospects; the tools at our command and the quality of our labors--none necessarily differ significantly from those of our classmates who have chosen a different path.
>
> If we do differ from our contemporaries in law firms and in corporations, that difference is in large part a reflection of the different objectives, the different concerns, and the different responsibilities of our respective clients.[9]

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[8]"The Federal Bar Association," Federal Bar News, September, 1965, p. 281.

[9]Rouland and Fontana, p. 339.

Significantly, Zeidman continues by identifying the current and future role of federal lawyers, especially "younger" lawyers:

> To many of this generation it seems clear that the action and passion of life in the last half of the twentieth century is increasingly to be found in public service. For here, it is that one can find both action and passion. It is in this arena that one can play a role, large or small, in formulating the Nation's response to the great challenges of our time: . . . how to assure equality of opportunity to every American . . . and how to do so within a framework supported by laws.
>
> These are challenges which do not yield readily to traditional techniques . . . but the role of the lawyer--defining the issue, resolving the conflict, bringing order out of chaos--remains . . . central to our society. . . .
>
> These are the challenges which will not be solved in our time . . . but a conference whose theme is "Federal Law and the Great Society" manifests not only a recognition that we are making a start, but also the legal profession's readiness to make its own unique contribution to that effort.
>
> These are challenges which are not responsive to the empty blandishments of the brash young man . . . but they may well be ripe for a fresh look and an eager, willing hand . . . for a chance to do better what they see their elders not doing well . . . or not doing at all.
>
> Perhaps "younger" lawyers may be defined as those who are still young enough to believe that solutions to these awesome challenges can be sought and found by people unified in their purpose and resolute in their determination. And we are young enough to deem ourselves fortunate to be participants in that historic search.[10]

Similarly, Abe Fortas comments that federal lawyers have participated in a crucial expansion of the concepts of individual, group, and national responsibility for the

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[10]Rouland and Fontana, pp. 339-340.

welfare of others--specifically reflected in the field of social legislation and notes the beginning of a new definition of the role of federal lawyers including the privilege, through legislation and litigation, to participate in the remarkable expansion of human rights. Speaking before the FBA Convention after Marshall, Fortas said:

> It has been in the Federal forum that the basic rights of the poor, the Negroes, and even those accused of crime have been forcefully reaffirmed--here it is that the basic legislative and judicial affirmations have taken place, that the Constitution applies to Negroes as well as to whites, to the poor as well as the rich, and it has been primarily in the Federal courts that the difficult definition and redefinition of the rights of those accused of crimes are being shaped.[11]

Significantly, Fortas characterizes members of the Federal Bar as follows: "To be a Federal lawyer is . . . not merely to specialize in matters before the Federal government and the Federal courts. It is . . . a way of life, as well as a professional speciality."[12] The preceding information, to some extent, indicates that the listeners probably had positive attitudes toward the ideas Marshall presented.

Regarding the attitudes of this audience, consisting of federal lawyers, toward the speaker; substantial evidence has been presented earlier in this study that other lawyers praised and respected Marshall as "a distinguished and an

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[11]"An Address by Honorable Abe Fortas," Federal Bar News, October, 1965, pp. 315-316.

[12]"An Address by Honorable Abe Fortas," p. 313.

excellent lawyer and jurist" and a trial lawyer, federal judge and Solicitor General with "extraordinary legal ability."[13] One senator remarked: "As a practitioner before the Supreme Court, in his capacity as Circuit Judge, and . . . as Solicitor General, he has displayed a knowledge, ability, and competence as well as [judicial] temperament."[14]

In the mid-1960s, lawyers made similar comments about Marshall's status. For example, Senator Hiram L. Fong (D-Hawaii) commented that the fact that Marshall is "a Negro who has been in the forefront of many of the most significant efforts to secure our ideas of equality and brotherhood to all Americans" made all Americans proud. Also, Fong said: "The name of Marshall is one of the most illustrious in the annals of American constitutional law, . . . contributing to the Nation's trememdous strides to make a reality the ringing words of equality in our Declaration of Independence."[15] Congressman William F. Ryan (D-New York) referred to Marshall as one of the nation's finest advocates

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[13]U.S., Congress, Senate, Committee on Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 16.

[14]U.S., Congress, Senate, Committee on Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 17.

[15]U.S., Congress, Senate, Committee on Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), pp. 16-17.

and certainly one of its most distinguished citizens and repeated President Lyndon Johnson's appraisal of Marshall's qualifications: "A lawyer and judge of very high ability, a patriot of deep convictions, and a gentleman of undisputed integrity." Identifying Marshall as a "great American," Ryan remarked: "I personally and most Americans applaud the contribution he has made to our jurisprudence in his 20 years as chief counsel of the NAACP. Regardless of individual feelings, his skills are universally recognized."[16]

This audience in all probability held similar opinions toward the speaker and respected him as a foremost authority. As an acknowledged leader in the legal profession, the audience probably expected the speaker to give information, advice and guidance which the listeners would most likely respect and/or accept.

Integrity of Ideas

The numerous sources of Marshall's ideas have been discussed at length earlier in this study. Essentially, the speaker's ideas were derived from his extensive reading and research, his thinking, his personal experiences and his career as an NAACP lawyer, federal judge and Solicitor General of the United States. Apparently, these experiences contributed to his interpretation of "doctrinal history; his

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[16]U.S., Congress, Senate, Subcommittee of the Committee on the Judiciary, Nomination of Thurgood Marshall to Be Solicitor General of the United States, Hearing, 89th Congress, 1st Sess., July 29, 1965 (Washington: Government Printing Office, 1965), pp. 8-9.

suggestion that "in recent decades the Supreme Court has molded the Constitution into a much needed instrument of social change, capable of initiating, accommodating and even requiring fundamental changes in the fabric of American society;" and his conviction that lawyers must assume greater responsibility to ensure that the criminal process conforms with "our highest traditions of fairness and justice" and to advocate laws which correspond with our constitutional ideals.[17]

Early evidence of Marshall's ability to formulate ideas regarding equality and justice appears in an article published in 1939. Commenting that the United States Supreme Court had rendered favorable decisions in twelve out of the thirteen cases handled by the NAACP, Marshall added:

> These decisions have served as guideposts in a sustained fight for full citizenship rights for Negroes. They have broadened the scope of protection guaranteed by the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution in the fields of right to register and vote, equal justice before the law, Negroes on juries, segregation, and equal educational opportunities. These precedents have been cited more than sixty-five times in the highest courts in the land and have been of benefit to all citizens, both Negro and white.
>
> The opinions in these cases define the constitutional rights of the Negro as a citizen. In addition, they broaden the interpretation of constitutional rights for all citizens and extend civil liberties for whites as well as Negroes.

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[17]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979 and A5981.

> The activity of lawyers acting for the NAACP has added to the body of law on civil rights for all Americans. The association, by pressing these cases, has brought nearer to realization the ideal embodied in the quotation engraved over the Supreme Court building in Washington, D.C.: "Equal Justice Under Law."
>
> While it may be true that laws and constitutions do not act to right wrong and overturn established folkways overnight, it is also true that the reaffirmation of these principles of democracy build a body of public opinion in which rights and privileges of citizenship may be enjoyed, and in which the more brazen as well as the more sophisticated attempts at deprivation may be halted.[18]

Marshall noted the implications of Supreme Court decisions. Also, he confirmed, as many others have elsewhere, his active participation in civil rights litigation which promoted equality and justice for all.

In the 1957 issue of the Journal of Negro Education, Marshall wrote a chapter--"The Rise and Collapse of the White Democratic Primary"--tracing the white primary from its obscure origin during Reconstruction days, according to "Lewinson in his Race, Class, and Party," to its "collapse" during the mid-twentieth century when Supreme Court decisions held such primaries unconstitutional. Explaining the nature and scope of the white primary, Marshall wrote:

> Of all the so-called "legal" devices for checking Negro participation in Southern politics perhaps the most effective, and on the surface the most legal, was the white Democratic Party primary--the most effective because it disfranchised the

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[18]Thurgood Marshall, "Equal Justice Under Law," The Crisis, July, 1939, pp. 199 and 201.

> Negro by excluding him from participating in the preelections which for all practical purposes were the elections in the one-party South, and the most "legal" because the Democratic Party, according to contemporary legal theory, was considered as being a voluntary association of citizens which could discriminate on the basis of race and color or along any other line in the conduct of its private affairs without offending the Fourteenth and Fifteenth Amendments.[19]

Marshall adds that the rise and collapse of the white Democratic primary is an important and distinct chapter in the story of the Negro's struggle for political equality. Evidence of Marshall's research can be found in frequent references to authoritative sources and the inclusion of practically every pertinent case brought to court.

Other factors seem pertinent to this discussion. For example, at this point in Marshall's life, he was extolled as a man who had been dedicated to the practice and administration of justice, playing a leading role and manifesting always his high standard of legal ability, an intellectual acumen, a high code of ethics, clear reasoning and hard work through the years. Also, many sources acknowledged that as an attorney and as a judge Marshall demonstrated his commitment to the highest American ideals of constitutionalism.[20] Similarly, his speech indicates

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[19]Thurgood Marshall, "The Rise and Collapse of the 'White Democratic Primary,'" Journal of Negro Education, Summer, 1957, p. 249.

[20]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Executive Report No. 13, 90th Congress, 1st Sess., August 21, 1967 (Washington: Government Printing Office, 1967), p. 1.

his commitment to the highest American ideals of constitutionalism and his belief that his listeners must share the responsibility for meaningful compliance with existing laws which protect the rights of all Americans and the advocacy of more laws if necessary to ensure equality and justice for all.

Many lawyers have expressed similar views regarding the impact of the Supreme Court decisions discussed by Marshall and the need for enforcement of current laws and designing new laws. For example, Archibald Cox, Marshall's immediate predecessor as Solicitor General, wrote:

> For a decade and a half the Supreme Court has been broadening and deepening the constitutional significance of our national commitment to Equality. The decisions implementing the equal protection clause set new constitutional goals for the states and the Congress, which lie substantially beyond accepted practices and whose achievement requires affirmative governmental action.
>
> A newer theme is the strong declaration of congressional power under section 5 of the fourteenth amendment. If Congress follows the lead that the Court has provided, the last [1965] Term's opinions interpreting section 5 will prove as important in bespeaking national legislative authority to promote human rights as the Labor Board decisions of 1937 were in providing national authority to regulate the economy. They may also relieve some of the stresses to which constitutional adjudication is subjected when the Court is forced to take the lead in a legal revolution.[21]

When Abe Fortas, Associate Justice of the Supreme Court of the United States, addressed the FBA Convention on

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[21]Archibald Cox, "The Supreme Court 1965 Term," Harvard Law Review, 80:91, 1966.

September 18, 1965, he speaks similarly about 1) the impact of legislation and judicial decisions and 2) the essential obligations of the federal lawyer. Regarding the first point, Fortas said that while federal action and administration have been and will continue to be essential because of the magnitude of problems of this age, there are limits to the vitality and effectiveness. Concerning the latter, Fortas remarked:

> Perhaps the most satisfying aspect of being a lawyer is the opportunity--perhaps the necessity--to function--to function at maximum capacity--to participate intensively not only in the trials and tribulations of our fellowmen, but also in the crises of our time--to help perpetuate the magnificent principles and institutions of our democracy, and . . . to help carefully and cautiously to apply them to drastically changing conditions. To all lawyers, comes the summons to function in crisis--the call to largeness of mind and spirit.[22]

Harvard Law School Professor and President of the Meyer Research Institute of Law, David F. Cavers, explained the lawyers' concerns and responsibilities:

> Their concern goes to the quality of the social order. In many areas [decent housing, fair employment, civil rights, etc.], the typical problem confronting the lawyer is how to protect the individual against the bureaucracy. . . . In other areas the typical problem is how to provide a bureaucracy capable of protecting the individual or how to assert the public interest effectively in clashes with private interests that often are more ably represented or more aggressively pressed. These tasks may entail the enforcement of existing law or the creation of new law. Troubles may spring from the obsolescence of legal instrumentalities

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[22]"An Address by Honorable Abe Fortas," Federal Bar News, October, 1965, p. 316.

> or procedures which have persisted for want of studies searching enough to reveal their deficiencies. There may be the need for social inventions. There certainly will be the need for the identification of goals and the articulation of issues where goals conflict.[23]

It appears that Marshall possessed the personal and professional resources to recognize and to address the pressing problems of the time. Proof of his conviction that the promises of equality and justice for all Americans are not self-fulfilling can be found in historical facts.

Briefly, a review of several events preceding Marshall's speech seems pertinent. By the early 1960s the civil rights movement intensified. Southern officials used First Amendment provisions as devices to harass outspoken civil rights advocates. Two civil rights groups paid for a full-page advertisement generally critical of the vicious treatment by Alabama officials of civil rights demonstraters. When the advertisement was printed in The New York Times, a libel suit was brought against the newspaper for one-half million dollars, charing it with printing erroneous and defamatory statements of "fact," an action punishable under an Alabama libel statute. The Alabama Supreme Court affirmed the judgment; but in New York Times v. Sullivan (1964), the Supreme Court reversed, and "for the first time in American history ruled that libelous utterance,

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[23]David F. Cavers, "Legal Education in Forward-looking Perspective," Law in a Changing America (Englewood Cliffs, New Jersey: The American Assembly, Columbia University, 1968), p. 144.

with certain important qualifications, was protected under the First Amendment." Importantly, Justice William J. Brennan asserted that criticism of government, which necessarily implies indirect criticism of individuals associated with it, "is to be encouraged, not merely in the interests of free speech, but in the interest of checking governmental power over people, and maintaining a democratic society."[24]

During the Kennedy administration and part of the Johnson administration, the Supreme Court rendered constitutional interpretations involving problems in other areas. For example, it extended the Fifth Amendment's prohibition against compulsory self-incrimination to the states. The Court felt that the citizen had the same right in state court as in federal. In addition, the Court took action which startled some constitutional lawyers as follows:

> [It] called for the creation of a whole body of extra-constitutional rights, arguing that this action was thoroughly within the spirit of the Ninth Amendment and the due process clause of the Fourteenth. With such tools, . . . the Court was in a position to strike down all state legislation that violates "fundamental principles of liberty and justice" or that was contrary to the "traditions and (collective) conscience of our people."[25]

By the end of the 1964-65 term, the justices completed a variety of judicial business inherited from the Eisenhower administration. Also, the Court had put a judicial seal of

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[24]Paul L. Murphy, The Constitution in Crisis Times 1918-1969 (New York: Harper and Row Publishers, 1972), pp. 398-399.

[25]Murphy, p. 402.

approval on numerous New Frontier programs and objectives, including rulings dealing with reapportionment, criminal procedure, etc. Apparently, much remained to be done during the Johnson administration to ensure equality and justice for all Americans. It should be remembered that Johnson and Congress made giant strides to secure equal rights for all Americans until Johnson's handling of the Dominican Republic and South Vietnam situations evoked criticism from Congress, black leaders and many other Americans.[26]

It seems that solutions for serious domestic problems were neglected considerably. The anti-Vietnam demonstrations and the 1965 riots in Watts, Chicago, and Cleveland, among other activities, suggest the critical nature of these problems. Many Americans were being deprived of their basic rights, including lives.

Pertinent to this discussion seems to be Fortas' comment on the climate of the 1960s and resources of the federal government:

> In our times, whether we like it or not, the Federal government and the Federal courts have been at the dynamic center of the nation's affairs . . . . It is here--in the Federal forum--that the law and the legal institutions that we have inherited, and those that we newly devise--it is here that these instruments have principally been brought to bear upon the raw materials of our times--in search for adequate answers. It is here in the Federal forum--in the Congress, the administrative and executive agencies, and the Federal

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[26]Murphy, p. 403.

> courts--that we have primarily been compelled to cope with the turbulent developments of this exciting age--to mold and fashion, to direct and contain, the strong, raw, explosive thrusts of the revolutionary events of our time.[27]

A large number of these judicial decisions were reached by the Supreme Court frequently at Marshall's urging. It is probable that Marshall possessed the intellectual resources which enabled him to formulate ideas in accordance with rhetorical standards. Further, the validity of his ideas rested, largely, upon historical accuracy. Also, it seems that the speaker demonstrated the power to envision the consequences of the American crisis.

Significantly, the speaker's message appears to contain several assumptions worthy of consideration: (1) promises of equality and justice under law for all Americans have not been fulfilled; (2) the significance of recent judicial decisions which represent appropriate and essential measures to guarantee and to protect the rights of all Americans should be examined by the audience; and (3) attainment of equality and justice under law for all Americans is a realistic, although not self-fulfilling goal.

Close examination of Marshall's speech, "Constitution and Social Change," seems to reveal the following major premises:

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[27]"An Address by Honorable Abe Fortas," Federal Bar News, October, 1965, p. 313.

(1) Supreme Court decisions, in recent decades, have reaffirmed and enlarged constitutional guarantees protecting the right to criticize the status quo.

(2) Through its power of invalidation, the Supreme Court has wrought fundamental changes in the structure of our society, attacking state laws designed to prevent Negroes from participating in the political process and from attaining any sort of social or economic equality.

(3) The Supreme Court's posture of leadership in reforming the criminal process and the law into an effective instrument of social policy should be shared by, not criticized by, members of the legal profession.

The major premises are only listed here. However, they will be analyzed in the section of this study which deals with logical appeals.

Organization

This section examines the organization of Marshall's speech of September 16, 1965. The concept of organization, defined by Russell Wagner as "the functional selection and use of materials for a particular purpose,"[28] serves as a useful guide. Accordingly, the organization is discussed in terms of purpose, proposition or central idea and structure.

Purpose. Typically, Marshall seems to suggest that his purpose is to inform. For example, the speaker says that his address "is offered merely as one interpretation of

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[28]Lester Thonssen, A. Craig Baird, and Waldo W. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), p. 471.

recent Supreme Court decisions, with no pretense that it is the only interpretation."[29] However, close study of this message indicates that the speaker presented information with the ultimate purpose of convincing his audience about the merits of these decisions and the necessity for meaningful implementation of these and other laws.

Authorities in the field of speech generally agree that the speaker who seeks to convince or persuade is an advocate.[30] Viewing Marshall's life, his career, and this particular speech, it is probable that Marshall's primary purpose was advocacy. Indeed, the speaker was not content merely to provide his listeners with information. Presumably, he wants his listeners to adopt a specific attitude toward the proposition and even to take action on it. As this discussion proceeds, it becomes more apparent that Marshall presents arguments and appeals in support of a position to which he has previously demonstrated his total commitment because he believes in it.

Central idea. Stating his central idea, Marshall appears to reiterate his specific purpose. For example, he said: "My hope is to cast a new light on this doctrinal history, to suggest that in recent decades the Supreme

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[29]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979.

[30]James H. McBurney and Ernest J. Wrage, Guide to Good Speech (2d ed.; Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1970), p. 37.

Court has molded the Constitution into a much needed instrument of social change, capable of initiating, accommodating and even requiring fundamental changes in the fabric of American society."[31] This statement seems to specify Marshall's immediate goal in speaking to this particular audience. This statement not only allows the speaker to point up his central idea but also to clarify what he hoped to accomplish. Frequently, it is considered wise to express purpose and central idea in this manner. The audience is better equipped to know what the speaker is trying to do from the beginning. The subject matter of the speech is narrowed and unified. Presumably, this audience of federal lawyers was aware of Marshall's participation in litigation which yielded many of these judicial decisions. The listeners probably found the speaker's statement candid, acceptable, and appropriate.

In the statement of his central idea Marshall previews what is to come in the body of the speech and prepares the audience for understanding and appreciation of the subject. It certainly seems to establish the need to listen for this particular audience.

Structure. This aspect of Marshall's address will be discussed in terms of its principal divisions: introduction, body, and conclusion.

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[31]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979.

The entire introduction consists of only 116 words or two paragraphs. Marshall quickly discloses his subject as he begins the second paragraph. Marshall probably established good relations with his listeners and gained their attention, saying:

> The recent history of the Supreme Court is, in one respect, like a contemporary abstract painting. It is not that we cannot understand the painting, if we try, but that it has so many different interpretations each of which has a measure of truth and relevancy. None of them can be dismissed for being impossible; none has a claim to absolute correctness; and each reflects the interpreter's special insights.
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> The subject of these remarks, "The Constitution and Social Change," is such an interpretation, suffering from these faults and seeking the appropriate immunities.[32]

Previously, we noted that recent Supreme Court decisions regarding civil rights and human rights had been praised and criticized, especially by members of the legal profession. Also, evidence supports the fact that lawyers, in general, and federal lawyers, in particular, recognized and respected Marshall's advocacy of equal rights under law for all Americans. It is very likely that Marshall's introduction was considered relevant and imaginative. A statement of the speaker's central idea followed the aforementioned passages.

Authorities in speech tend to agree that if the opening portion of an address is interesting, if the speaker is interesting, if the speaker is likable and has prestige,

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[32]Ibid.

and if he begins with some aspect of the subject with which the audience can agree, then he may be able to get his listeners to change their attitudes, where necessary, toward his proposal.[33] Marshall's introduction appears to meet rhetorical standards.

The body of this speech consisting of almost 3,800 words is lengthy vis-à-vis other speeches treated in this study. Studying this speech as printed in the Congressional Record of October 1965 and in the Federal Bar News, dated October 1965, the following headings suggest a topical pattern of organization:

(1) Protecting the Right to Criticize the Status Quo;
(2) The Power of Invalidation;
(3) Reform of the Criminal Process.

Possibly, the following sentence outline of the speech, which contains main ideas and major sub-points, best illustrates how the body of the speech fulfilled the rhetorical requirements in terms of developing the central idea of the message, which was specified previously:

I. Recent Supreme Court decisions re-affirmed constitutional guarantees of the right to criticize the status quo

   A. In framing the Bill of Rights a certain primacy was given to assuring that the citizenry would have the fullest opportunity to criticize the established social and political order and to propose radical reform.

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[33]Milton Dickens, Speech Dynamic Communication (3d ed.; New York: Harcourt Brace Jovanovich, Inc., 1974), p. 301.

B. Although the philosophic roots of the constitutional guarantees can be traced to the very founding of this nation, only within recent years has this promise of the First Amendment approached fulfillment; today, the First Amendment stands as one of the touchstones of our civilization, not just as a mere legal rule to be applied dispassionately by the courts, but as a viable principle for organizing all our social relations.

C. However, in 1922, the Supreme Court declared, almost as a proposition of hornbook law, that "neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes upon the States any restrictions about freedom of speech. . . ."

D. In 1925, the Gitlow v. New York case marked the inception of a new era in the First Amendment doctrine, safeguarding the right to criticize from suppressive actions of the states.

E. In recent years, confrontations with state suppression created the occasion for the Court to interpret or reinterpret First Amendment guarantees.

1. In the New York Times Case (1964), the Supreme Court interpreted the First Amendment to yield a measure of protection never before afforded, of placing crisp limits on state libel laws: criticism of public officials could not be the subject of governmental sanction.

2. The Court expanded the First Amendment to protect freedom of expression, recognizing that there are many forms of human behavior which serve in terms of First Amendment purposes, the same function as speech--to express dissatisfaction; to protest; and to criticize.

II. In the last decade, the Supreme Court, through its power of invalidation, assaulted discriminatory state regulations and laws and wrought fundamental changes in the structure of our society.

A. Brown v. Board of Education was the initial spearhead launched by the Supreme Court; segregation in public education was constitutionally condemned and thus stripped of all moral predicates.

B. In the first half of the twentieth century the power of invalidation was too often used to frustrate recently enacted legislation designed to effect a whole sale change in the social order; yet Brown v. Board of Education, and its progeny, initiated and required social change.

C. Two conditions justify transforming the power of invalidation into an active instrument of social change: (1) an established social pattern that threatens a central constitutional ideal and (2) default by other societal institutions.

D. The hope is not that the Supreme Court will singly take up the burden of eliminating massive injustices through requiring further reform, but that the other social and political institutions will make it a joint enterprise if not their special responsibility.

III. Supreme Court's involvement in reforming the criminal process and transforming law into an effective instrument of social policy represents province and responsibility of courts which should be shared and not criticized.

A. In the 1930s, two Supreme Court decisions heralded a new Supreme Court supervision radically reforming the state criminal processes and introduced a new dimension of its involvement in the process of effecting social change.

B. Supreme Court's involvement in judicial reform of the judicial process has continued to the present with ever greater intensity, guaranteeing the right to counsel and protecting the personal rights of the Fourth and Fifth Amendments through the imposition of exclusionary rules on the premise that the Fourteenth Amendment entrusted the

federal courts with an independent through supplementary power to decide which actions by state law enforcers violated our basic concepts of justice.

C. The Supreme Court's extraordinary posture of leadership can in part be attributed to a serious default by other institutions, and the time has come when the burden must be shared by institutions closer to the citizenry, especially members of the bar.

D. In recent decades, the Supreme Court has transformed the law into an effective instrument of social policy, and the example par excellence is its involvement in social change; it seems more important to recognize this transformation than to debate its propriety.

Marshall's conclusion for this speech seems suitable since it reaffirms his belief in the capability of laws and the Constitution to ensure equality and justice under law for all. However, this conclusion differs from that in other speeches treated in this study because Marshall specifies the fact that his speech is ending and he uses a quotation. For example, Marshall concludes his address as follows:

> I will close . . . by quoting a revolutionary patriot, Thomas Jefferson:
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> "I am not an advocate of frequent changes in laws and constitutions, but laws and constitutions must go hand in hand with the progress of the human mind, as that becomes more developed and more enlightened. . . . Institutions must advance . . . to keep pace with the time. We might as well require a man tc wear still the coat which fitted him as a boy as civilized society to remain under the regime of their barbarous ancestors."

Without attempting to trace the influence of Jefferson on Marshall's life and beliefs, it seems

significant that Marshall incorporated some of Jefferson's ideas in the conclusion of this speech. It seems reasonable to assume that Jefferson's ideas have influenced Americans and American life for centuries. For example, Edwin A. Alderman, an American educator of earlier times who frequently spoke about the necessity for making education, particularly in the South but also throughout the nation, more democratic, also eulogized great Americans. In 1924, speaking of Jefferson's services and influences, Alderman characterized him as (1) the first great philosopher and intelligent radical in American life; (2) the first great American Democrat; and (3) the greatest liberal that has appeared in American history.[34] In a later speech, Marshall noted that Jefferson sought to have slavery condemned in the Declaration of Independence although he was unsuccessful.

Of especial import is Marshall's use of Jefferson's words which enabled the speaker to restate the belief he desired the audience to accept. Further, it probably provided the audience with additional motives for building the desired attitude.

Although evidence seems to indicate that most of the hearers shared Marshall's belief in equality and justice under the law for all Americans, surely there were listeners who did not. Perhaps, Marshall linked his belief with that

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[34]William N. Brigance, ed., History and Criticism of American Public Address (New York: Russell and Russell, 1960), pp. 545-546.

of Jefferson to gain the desired response to his message from the entire audience, particularly the latter group.

Restatement of the belief is considered an effective way to conclude this type of speech. It is likely that Marshall's conclusion meets rhetorical standards.

In summary, this discussion of the organization of Marshall's speech reveals that this address contained an introduction, a body, and a conclusion. Materials of the introduction probably established goodwill and gained the attention of the listeners, indicating purpose and thesis. The main ideas in the body of the speech, to a great extent, follow the speaker's plan and support the central idea expressed initially by the speaker. Finally, the conclusion includes materials, restatement and a quotation, which can be considered appropriate and effective.

Logical Appeals

Having discussed Marshall's major premises and lines of argument, the critic must examine the forms of support which the speaker used to gain understanding, acceptance, and action. According to some authorities in the field of public address and rhetoric, "the supporting materials for a speech may serve any one of three purposes: (1) to clarify, (2) to prove, and (3) to amplify."[35]

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[35]Giles W. Gray and Waldo W. Braden, Public Speaking: Principles and Practices (New York: Harper and Row Publishers, 1951), p. 281.

With these purposes in mind, this section will focus on the nature of Marshall's supporting materials, the speaker's methods of employing them, and the general effectiveness of these forms of support in terms of helping the speaker to achieve his purpose.

Marshall's evidence in his speech before the FBA can be described under the categories of fact and opinion. For evidence of fact the speaker referred to the Bill of Rights, constitutions, laws, historical data, personal observations and legal cases or precedent.

Supporting his contention that recent Supreme Court decisions protected the right to criticize the status quo, Marshall argued inductively, citing circumstances and legal cases. He added personal opinions to support his contention that in recent decades the Supreme Court reaffirmed constitutional guarantees by enlarging and reinterpreting the right to criticize the status quo. One example illustrates the speaker's practices.

> Although the philosophic roots of constitutional guarantees can be traced to the very founding of this nation, only within recent years has this promise of the first amendment approached fulfillment. Now the first amendment stands as one of the touchstones of our civilization, not just as a mere legal rule to be applied dispassionately by the courts, but as a viable principle for organizing all our social relations. This near universal acceptance makes us lose sight of the fact that in 1922, almost 150 years after the founding of the Nation and adoption of the first amendment, and 50 years after the Civil War and the adoption of the 14th amendment, the Supreme Court declared, almost as a proposition of hornbook law, that "neither the 14th amendment

> nor any other provision of the Constitution of the United States imposes upon the States any restrictions about freedom of speech."
>
> Three years later this declaration was rendered obsolete. (Gitlow v. New York, 268 U.S. 652 (1925) in one sense marked the inception of a new era in first amendment doctrine. Thanks to the absorptive powers of the Due Process Clause of the 14th amendment, the first amendment's protective cloak was spread wide enough to safeguard the right to criticize from suppressive actions of the State . . . . The non-Federal levels of government have been the primary agencies formulating policy on the issues that concern the ordinary citizen in a most direct and immediate way--education; police protection; sanitation; recreation; zoning; etc. Without limiting the power to suppress criticisms of these policies, the first amendment freedoms would be meaningless to the ordinary citizen, who for example, is not likely to take up the cause of altering the form of American Government, but who can be moved to question the soundness of the local school board's recent decision. Of course, most States have had laws guaranteeing freedom of speech . . . and have developed viable traditions of free criticism. Yet the extension of the Federal constitutional guarantee involves an independent and impartial protection, the significance of which can be illustrated by imagining what it would have meant to those on the historic Selma March if they had nothing more to rely on than the laws and the law enforcers of Alabama to protect their right to criticize the policies of that State.[36]

Marshall further clarifies his interpretation of the Court's efforts regarding right to criticize status quo. Here, the speaker refers to the New York Times case (New York Times Co. v. Sullivan, 376 U.S. 254 (1964) in which the Court interpreted the first amendment to yield a protection never before afforded, placing crisp limits on State libel laws.[37]

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[36]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979-A5980.

[37]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

Marshall also refers to another aspect of First Amendment protection which he called "lateral expansion." In other words, the specifics mentioned in the First Amendment, such as freedom of speech and press, have come to be referred to as the freedom of expression.[38]

Arguing deductively, Marshall contends that through its power of invalidation, the Supreme Court has wrought fundamental changes in the structure of our society. Then, the speaker supports this contention with example, professional experience and opinion, testimony of authority, restatement, and contrast:

> My point can best be made through example, and I chose the example that is closest to me--Brown v. Board of Education. So much has happened in the decade since the decision, and people's expectations have risen, quite justifiably, at such an accelerated pace, that we often lose perspective. Yet just 25 years ago most Negroes' lives were constricted by a whole series of state-imposed and state-fostered laws and regulations designed to foreclose them from attaining any sort of social or economic equality. In the last decade, however, there has been a massive assault on this citadel, and although today we find the legislature, the executive, and the general populace joining and to some extent directing the assault, two things cannot be forgotten--Brown v. Board of Education was the initial spearhead, and it was launched by the Supreme Court.
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> What crumbled was not merely a network of legal rules; it was a whole social system bent on keeping the Negroes in a position of inferiority, a social system inspired by the Jim Crow laws. Segregation was constitutionally condemned and it was thus stripped of all moral predicates. . . . In this struggle for racial equality the Supreme Court served, at least in 1954, as a voice not of

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[38]Ibid.

> contemporary opinion but as a voice of communal conscience, or in Chief Justice Hughes' earlier characterization, as "teachers to the citizenry."[39]

To support his second contention in this speech, Marshall also employed contrast. He proceeds to contrast use of the power of invalidation in the first half of the twentieth century with its use in recent decades: "The essential difference can . . . be expressed in terms of the concept of social change. In the first half of the 20th century the power of invalidation was too often used to frustrate recently enacted legislation designed to effect a wholesale change in the social order; yet Brown v. Board of Education, and its progeny, initiated and required social change."[40] Marshall added the following opinion: "This contrast reveals two conditions that justify transforming the power of invalidation, spawned in a more modest context, into an active instrument of social change--an established social pattern that threatens a central constitutional ideal and default by other societal institutions."[41]

Evidence is provided to support the speaker's third contention. Marshall cited examples of cases and decisions and drew a conclusion regarding the Supreme Court's leadership in reform of the criminal process.

> In Powell v. Alabama (287 U.S. 45) decided by the Supreme Court in 1932, State convictions were

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[39]Ibid. [40]Ibid.

[41]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5981.

> reversed because the defendants were denied the effective assistance of counsel in their trial; and in Brown v. Mississippi (297 U.S. 278 (1936), decided four years later, State convictions were invalidated because they rested solely "upon confessions shown to have been extorted by officers of the State by brutality and violence." These two decisions heralded a new Supreme Court supervision radically reforming the State criminal processes, and they introduced a new dimension of its involvement in the process of major social change.[42]

Marshall supported his conclusion with a somewhat lengthy explanation that the Supreme Court's involvement in this type of reform was consistent with the traditional role of the courts. Listing other areas which need radical reform, Marshall asked lawyers to share the responsibility for judicial reform and to insure that trials conform to our highest traditions of fairness and justice.

Apparently, Marshall felt that the needs of his listeners would not be met if he failed to acknowledge the controversy surrounding Supreme Court decisions. Accordingly, he remarked that some of the criticism stemmed from those whose material selfishness and self-satisfaction led them to resist any change in the status quo with fury. Other criticism, he opined, stemmed from a more intellectual level. In this category he identified two groups. First, he adverted to those who felt that they would have rendered a different decision from that handed down by the Supreme Court. He added, "That kind of disagreement is the life-blood of the law; the vigor of such disagreement is an

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[42]Ibid.

occasion to rejoice rather than despair." Secondly, he referred to those whose intellectual and professional criticism reflected a profound misunderstanding and reflected a refusal to accept a new concept of law, to shake free of the 19th century moorings and to view law, not as a set of abstract and socially unrelated commands of the sovereign, but as effective instruments of social policy.[43]

Brembeck and Howell describe the common arguments on a continuum ranging from induction to deduction because, in practice, few arguments are purely inductive or deductive in method.[44] In this speech, Marshall argued inductively and deductively. In this speech, as in others, Marshall employs argument from circumstantial detail. Indeed, the speaker demonstrates a preference for this cause-to-effect reasoning which points to a group of circumstances and alleges results.

Most of Marshall's evidence can be considered historical fact, legal cases which he had argued or researched thoroughly, and opinions which he was well-qualified to express. The factual materials stand and cannot be denied. The listeners were probably familiar with the legal cases and Marshall's participation. While the opinions may be subject to challenge there were factors

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[43]Ibid.

[44]Winston Lamont Brembeck and William Smiley Howell, Persuasion (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1952), pp. 194-240.

emanating from speaker's knowledge, training and experiences which would win respect if not acceptance.

It can be concluded that the evidence presented by Marshall met rhetorical requirements. Certainly they clarified and amplified the main points. Undoubtedly, the speaker was able to fulfill his purpose and to meet the needs of his hearers.

Emotional Appeals

According to some authorities in the field of public address, emotional or pathetic proof "includes all those materials and devices calculated to put the audience in a frame of mind suitable for reception of the speaker's ideas."[45] Usually listeners are not content to be logical and realistic; they often desire emotional stimulation. With this in mind, this section examines the emotional or pathetic proof in Marshall's speech before the Federal Bar Association.

In this particular speech, Marshall's pathetic proof can be characterized as follows: (1) appeals to justice and fair play; (2) appeals to social responsibility; (3) appeals to professional pride; and (4) appeals to patriotism.

Speaking to the Federal Bar Association, Marshall seems to appeal to the listeners' sense of justice and fair play many times. For example, at one point Marshall remarked

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[45]Thonssen, Baird and Braden, p. 358.

that there have been flagrant violations of basic human rights specifically protected by the Bill of Rights. Speaking of the Supreme Court's efforts to expand First Amendment guarantees, specifically in protecting the right to criticize the status quo, he said:

> Such a measure of protection seems to be an elementary requirement to the healthy public debate of public issues, the particular societal activity that the First Amendment was designed to safeguard, nay encourage, and the activity which is the life-blood of any progressive society. Those who cherish these values could only hail the development.[46]

Expressing concern about the government's power to regulate the manner of expression, Marshall seems to appeal to the audience's sense of justice, fair play, and professional responsibility.

> Rigor is required . . . in its application in order to assure that the regulation of the manner of expression remains neutral as to content. Achieving this content-neutrality requires more than eliminating uneven regulation, where the proponents of one cause are afforded privileges and rights not afforded to another. For often the defenders of the status quo are prepared to stifle all aggression, since the burden of persuasion invariably falls on reformers. If, for example, we accepted the principle that the manner of expression could be regulated so that the citizenry would never be "forced" to listen to speech they did not want to hear--and I use "force" in the mildest sense not the blaring sound trucks but the street corner orator and peaceful picket line--the promise of the first amendment, to provide an effective means of criticizing the status quo and proposing radical reform, might be broken. This is an expression of concern not of fatalism; I am confident that if the officials who have taken the oath to uphold the Constitution, and this includes more than the ever

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[46]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

> vigilant justices of the Supreme Court recognize the delicate dynamics inherent in trying to achieve content-neutral regulation this promise will be fulfilled.[47]

Another example illustrates the speaker's appeal to the sense of justice and fair play:

> For example in Powell v. Alabama the petitioners stood trial for their lives, in hostile and tense atmosphere, and yet were deprived of the effective assistance of counsel: The trial judge would have to do more to assure this assistance than to appoint, in a most casual way, "all the members of the bar." And in Brown v. Mississippi the coercion and brutality were alarming; as it is related in the opinion, some of "defendants were made to strip and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it" until they confessed.[48]

Also Marshall invited the members of the Federal Bar Association "to join in this task of reform."[49] His remarks seem to represent further evidence of his use of appeal to professional pride and social responsibility. Marshall said:

> The Supreme Court's extraordinary posture of leadership in reforming the criminal process can in part be attributed to a serious default by other institutions, and it seems to me that the time has come when the burden must be shared. . . . To be sure, this is not only an invitation to the local courts and local legislatures--it is also addressed to all members of the bar. Through their professional associations they can initiate and press for this reform, and each lawyer engaged in a criminal trial, whether as prosecutor or defense counsel, possesses a special responsibility and power--the

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[47]Ibid. [48]Ibid.

[49]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5981.

> the power of self-control--to insure that the trial conforms to our highest traditions of fairness and justice.[50]

Also addressing the FBA Marshall probably appeals to the listeners' patriotism and common sense "by quoting a revolutionary patriot, Thomas Jefferson:"

> "I am not an advocate of frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind, as that becomes more developed more enlightened. . . . Institutions must advance . . . to keep pace with the times. We might as well require a man to wear still the coat which fitted him as a boy as civilized society to remain under the regime of their barbarous ancestors."[51]

Ethical Appeals

Essentially, Marshall's ethical appeals before this audience consisting of lawyers and law students emanated from the reputation he brought to the speech situation. However, the speech per se serves to communicate much about the speaker's probity, sagacity, and goodwill.

Evidence of Marshall's use of ethical proof as a means of persuasion can be perceived in his ability to strengthen his reputation while he spoke. For example, speaking on "The Constitution and Social Change," he remarked that each interpretation of recent Supreme Court actions "reflects the interpreter's special insights and experiences." Continuing, he said that his interpretation of recent Supreme Court decisions "is offered merely as one interpretation . . . with no pretense that it is the only

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[50]Ibid. [51]Ibid.

interpretation."[52] Another example seems to illustrate the speaker's practice. Observing that the Supreme Court, through its power of invalidation, has wrought fundamental change in the structure of our society, Marshall said: "My point can best be made through example, and I chose the example that is closest to me Brown v. Board of Education . . . . In this struggle for racial equality the Supreme Court served, at least in 1954, as a voice not of contemporary opinion but of communal conscience, or in Chief Justice Hughes' earlier characterization, as 'teachers to the citizenry.'"[53] The speaker appears to link his accomplishments with others which are virtuous.

Earlier discussion of how Marshall handled his materials seems to indicate that the speaker established sagacity while he spoke. Specifically, his use of what is generally called common sense seems apparent in the following example: "Hence the first amendment's guarantee of freedom of speech and the press, and the right of people to assemble peaceably and to petition the Government for redress of grievances--these safeguards, it seems to me, are the minimal conditions needed for social change in any

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[52]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979.

[53]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

society."[54] Discussing implications of the Court's decision regarding First Amendment guarantees, Marshall comments on two "developments." The first placed "crisp limits of State libel laws" and the second consisted of "the lateral expansion of the first amendment protection. . . . Specifics . . . such as freedom of speech and press, have come to be referred to as the freedom of expression." Continuing Marshall said:

> With this lateral expansion, however, must come further concession to Government regulation; or to express the idea more graphically, the lateral expansion is necessarily accompanied by vertical contraction, where the peak of the vertical axis is the ideal of immunity from all control. Mr. Justice Holmes' example of shouting "Fire" in a crowded theater presented a compelling case for accepting some Government control of speech; and one need not be nearly as clever as the Justice to conjure up other hypotheticals illustrating, in a compelling way, the legitimacy of Government control if the relevant activity is not "speech" but expression, which can take a great variety of forms, some of which have always been sanctioned by criminal law. Could an individual refuse to pay taxes of commit murder or grand larceny, then claim that his conduct was a means of protecting and criticizing governmental policies, and thus seek the immunities of the first amendment? I think not. Hence this lateral expansion seems to have resulted in the general acceptance of the proposition that Government has the power to regulate the manner of expression, the questions as to "how," "where," "when," though not the content of the expression, the "what."
>
> As a general proposition, this development is no cause for concern. Rigor is required, nevertheless, in its application in order to assure that the regulation of the manner of expression remains neutral as to content. . . .[55]

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[54]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979.

[55]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

Apparently, Marshall's good will is revealed through his ability to proceed with candor and straightforwardness. For example, Marshall noted that recent Supreme Court decisions have many different interpretations, each of which has a measure of truth and relevancy. He added: "None of them can be totally dismissed for being impossible; none has a claim to absolute correctness; and each reflects the interpreter's special insights and experiences. The subject of these remarks, 'The Constitution and Social Change,' is such an interpretation, suffering from these faults and seeking the appropriate immunities. . . ."[56]

Marshall seems to establish good will by identifying himself with the listeners and their problems. He also offers necessary rebukes with tact and consideration. For example, he said:

> We often lose sight of the fact that the courts have traditionally engaged in this type of reform. The quality of judicial process has always been the special province and the special responsibility of the courts. Even where other institutions, such as the legislature, have participated in this reform, it has been as a response to judicial promptings. For example, those protesting against the imposition of the new exclusionary rules often overlook the hearsay rule, a massive judge-created exclusionary rule designed to protect less worthy interests than constitutional rights. Of course, there is a vital distinction. Traditionally the judicial reform of the judicial process has been initiated and effectuated by the courts whose process was being challenged; here the reform has emanated from the

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[56]Thonssen, Baird, and Braden, p. 459.

> Federal courts, which some would like to view as the courts of another, though supervening, jurisdiction.
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> It is not difficult to explain this phenomenon, and in many respects the explanation resembles that offered in connection with analyses of the Supreme Court's active use of the power of invalidation. First, there had been flagrant violations of basic human rights specifically protected by the Bill of Rights. . . . Secondly, there was a realization by the Justices that State courts defaulted. The state judges had state constitutional provisions to deal with these injustices, and they had the obligation to apply the federal constitution, but they refused to exercise their creative power. The Supreme Court attempted to fill the void. . . .
>
> There is one very unique facet to this reform. The constitutional principle upon which these decisions are based, the principle that no individual shall be deprived of his life or liberty without due process of law, is an evolutionary principle--its contours change with the gradual evolution of our communal values. . . .[57]

Writing a rhetorical analysis of Marshall's arguments before the Supreme Court, Jamye Coleman Williams makes the following observation about the speaker's "ethical and pathetic appeal:"

> I believe Thurgood Marshall's professional status as a civil rights lawyer, who had won many cases before the high court, served him in good stead. His personal integrity, his dedication to the cause, his own high sense of ethics would necessarily create a kind of rapport with the Court. In addition, the presence of emotional overtones, which would be inherent in any case concerning justice and injustice, had some weight.[58]

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[57] U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5981.

[58] Jamye Coleman Williams, "A Rhetorical Analysis of Thurgood Marshall's Arguments Before the Supreme Court in the Public School Segregation Controversy" (PhD dissertation, Ohio State University, 1959), p. 202.

Speech of April 27, 1966

Occasion and Audience

Criticism of public address "must be soundly based upon a full and penetrating understanding of the meaning of the events from which it issues and of the listeners who paused to consider what is said."[59] The occasion on which Marshall made this speech, "Human Rights--Civil Rights: From Theory to Practice," is examined in terms of the following questions: (1) what events gave rise to the speech; (2) what factors determined the time and place of the speech; (3) what elements influenced the speaker in his choice of subject and approach to the occasion; and (4) under what conditions did the speaker address the listeners?[60]

Regarding the events that gave rise to Marshall's address before the Law Day Luncheon of the University of Miami School of Law and the local bar association, several factors appear pertinent. For instance, reliable sources indicate that annually law students and lawyers celebrate "Law Day." Generally, these observances may be designed to emphasize the significance of law in American life. Specifically, it should be noted: "The Congress by joint resolution . . . designated the first day of May of each year as Law Day, USA, to remind us of the fundamental truth that our liberty, our rights to pursue our individual destinies, and our very lives are dependent upon our system

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[59]Thonssen, Baird, and Braden, p. 349.

[60]Thonssen, Baird, and Braden, p. 357.

of law and independent courts." Further, it has been reported that the President of the American Bar Association (ABA) set the theme for Law Day--1966 as follows:

> Our nation will celebrate in 1966 two notable milestones in the life of our republic. One is the 175th anniversary of the Bill of Rights. The other is the 190th anniversary of the independence of the United States.
>
> It is appropriate that on May 1 we also will be celebrating Law Day USA with the theme: "Respect the Law--It Respects You."[61]

Significantly, President Lyndon B. Johnson's official proclamation of 1966 Law Day USA noted that both of the aforementioned occasions "are notable milestones in the life of our republic and in man's quest for freedom and justice under law." Continuing, Johnson wrote:

> These two events in American history serve to remind us that the great individual rights we value so highly carry with them corresponding obligations of citizenship: to obey the law--recognize the rights of others--resolve grievances by lawful means--support law enforcement agencies--encourage law obedience by others--practice and teach patriotism--and defend our country.

Also, Johnson noted that the Law Day theme for 1966 "will serve to focus attention on the need for every individual to do his part to help strengthen our national commitment to the rule of law." It should be added that publications by and for lawyers and law students printed the president's

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[61]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643.

proclamation which urged commemoration of Law Day "with suitable programs and ceremonies."[62]

To some extent, Marshall's choice of subject and approach to the occasion could have been influenced by some of the aforementioned matters. For example, the speaker's introductory remarks include reference to statement by the president of the ABA which established the theme for Law Day 1966. Continuing, Marshall said: "In discussing the theme, I shall dwell on what I consider to be paramount: 'Human Rights--Civil Rights' and more particularly 'From Theory to Practice'." Marshall's introduction contains evidence of other factors that influenced his choice of subject. For example, he stated: "Our world leadership and struggle for peace is evaluated and re-evaluated by democracy as it is practiced at home."[63] It should be remembered that during the mid-1960s America's involvement in Vietnam had produced problems including nationwide resistance to the draft, student insurgency on college campuses, embitterment of many black leaders who regarded Vietnam as a drain on America's obligation to help the poor, and black disillusionment with the hollowness of securing further legal rights which was producing violent responses like riots in Watts, Chicago, and Cleveland. Concerning the latter, it has been reported: "Federal response was not forthcoming, and

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[62]"Proclamation by the President of the United States," Federal Bar News, May, 1966, p. 7.

[63]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643.

indeed by 1966 the government was spending more for Vietnam than for the entire federal welfare program. Black discontent mounted. . . . But [there was] no broad remedial legislation for the ghettoes or for more pressing urban problems such as unemployment, slum housing, and hostile police."[64]

It should be noted that after the riots in Detroit and Newark, President Johnson in July 1967 established the National Advisory Commission on Civil Disorders to investigate. The Commission's report, released in 1968, is discussed in the following passage:

> While submitting detailed recommendations for a comprehensive program to insure equality, social justice and peace, and warning against resort to blind repression or capitulation to lawlessness, it also placed major responsibility for the nation's racial disorders on white racism and warned that "our nation is moving toward two societies, one black, one white--separate and unequal. . . . To continue our present course will involve the continuing polarization of the American community, and will involve ultimately the destruction of basic democratic values.[65]

On the other hand, the Supreme Court during its 1965-66 session handed down a series of rulings in the civil rights area. Among other things, in these rulings the Supreme Court continued its protection of civil rights demonstrators from unwarranted harrassment, struck further at southern schemes for noncompliance with school desegregation, opened public park facilities to equal access, and struck at divergent of white and Negro patrons of Louisiana public librairies. However, such federal action often evoked

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[64]Murphy, p. 415. [65]Ibid.

southern hostility to the civil rights movement. For example, Governor Wallace indicated that he was unable to protect the marchers in Selma, Alabama, and southern courts refused to bring in indictments against whites who assaulted and murdered civil rights workers, even when federal officials provided them evidence of form and nature. Unfortunately, at this point in time, the extent of federal intervention in such cases was limited by the Constitution. In late March, 1966, the Supreme Court issued opinions deploring the inability of the federal government to move against private citizens who deprived other Americans of their basic rights--including their lives.[66]

Significantly, Marshall's speech of April 27, 1966, noted:

> Save for Viet Nam and the drive for peace throughout the world, public opinion--professional and lay--is focused on the so-called Negro revolution in the United States and the War on Poverty. Indeed, all three are part of the same cloth. Our world leadership and the struggle for peace is evaluated and re-evaluated by the democracy as it is practiced at home. We can never explain away our mistreatment of minorities, whether because of race or lack of financial affluence.
>
> Recent demonstrations ranging from the peaceful Selma march to the violent riots in Los Angeles, California, are dramatic enough to cause all to pause and seek out inevitable solutions. Then, too, our present judicial process including the present method of jury trials in the South--indeed our entire judicial system needs more careful study. Whichever way you look at it, we must seek the removal of all barriers in American life which are based on minority status whether racial or financial, or both.

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[66] Murphy, pp. 412-413.

Additionally, Marshall remarked that understanding present problems, first, required a look at our basic statutory structure which initially gave legal support to slavery. He added: "In fact, two worlds were being set up with the same democracy."[67]

With the preceding discussion in mind, it appears that the speaker made a suitable choice of subject and approach to the occasion.

Previously, it was mentioned that the Congress designated May 1 of each year as "Law Day." However, May 1, 1966, was a Sunday. According to the Miami News, Marshall's speech was delivered "before the Law Day Luncheon" on April 27, 1966, at the Everglades Hotel during Law Week.[68] It seems safe to assume that the time and place for the speech were appropriate and convenient for Solicitor General Marshall as well as the persons sponsoring the event.

Further, it is likely that the sponsors selected a satisfactory setting for their commemoration of Law Day 1966. There does not seem to be any evidence to indicate that the conditions under which Marshall gave this speech were anything but favorable.

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[67]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643.

[68]"Thurgood Marshall Raps King's War View," Miami News, April 27, 1966.

The forces which shaped the occasion also influenced the audience to some degree. This section deals with other pertinent factors about the listeners by considering the following questions: (1) what was the composition of the audience; (2) in what ways were the listeners homogeneous; (3) what did the listeners know about the speaker; (4) what did the listeners know about the speaker's subject; (5) how did the listeners stand on the speaker's proposition; (6) did a significant portion of the listeners hold attitudes favorable to the speaker's point of view; and (7) what attitudes stood in the way of the speaker's achieving his objectives?[69]

The audience was composed of University of Miami Law School students and faculty members along with members of the local bar association.[70] According to the University of Miami School of Law's catalogue, it was established in 1928; it is neither controlled nor supported by state, municipality, or church; it is a co-educational and desegregated; and applicants for admission are accepted or rejected without regard for sex, color, or creed.[71] The

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[69]Thonssen, Baird, and Braden, p. 358.

[70]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 11.

[71]Bulletin--University of Miami School of Law 1966-1967 (Coral Gables, Florida: Publication of University of Miami, 1966), p. 16.

same source stipulates the following objectives:

> The purpose of the School to fit the student for the practice of law and, in a larger sense, for his responsibilities in our social, political, and economic affairs, is being achieved by a comprehensive curriculum covering a wide range of topics using varied teaching techniques. Starting with training in basic legal techniques, particularly in case and statutory analysis and synthesis, students are guided into problem analysis and finally into individual research, writing, planning and drafting, always directed toward the ideals of justice, of good government and free, progressive society.[72]

These factors in principle appear to indicate to some extent the general nature of the law students and faculty in this particular audience. The validity of this assertion rests upon the assumption that faculty and students pursued the aforementioned objectives. Also, it is presumed that people are shaped by their environment.

In terms of the homogeneity of the listeners, it seems significant that lawyers and law students assembled to commemorate Law Day in 1966. These individuals shared or anticipated sharing the same profession. Their presence on this occasion suggests other similarities including their respect for the occasion, the theme, and the speaker.

It seems that the speaker was well-known and respected as an outstanding trial lawyer, judge, and Solicitor General. For example, during Senate Hearings on his nomination, one senator remarked: "He has been a towering figure in the landmark cases striking down discriminatory

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[72] Bulletin--University of Miami School of Law 1966-1967, p. 17.

practices, in litigation and the decisions which lie at the very heart of American life and have brought us closer in our everyday life to those principles for which we stand."[73] Further, many lawyers agreed that the character and the career of Thurgood Marshall embody the best in American life and the best in American law. Lawyers have asserted that Marshall's "imprint on justice and jurisprudence, once . . . on the Court, will without a doubt be as constructive and distinctive as that of his previous years of service to his fellow man."[74]

These factors, in part, established Marshall's status as a respected member of the legal profession and as an eminently qualified authority on the subject for this occasion. It is conceivable that in 1966 most lawyers and law students were acquainted with the speaker's acclaimed and widely publicized "exemplary career in the law and in the public service."[75]

Obviously, the lawyers and law students who listened to Marshall's speech of April 27, 1966, were knowledgeable about the subject. During the mid-sixties in America, the Civil Rights movement and related matters received attention

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[73]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 15.

[74]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 16.

[75]Ibid.

from most Americans. For more than a decade prior to this address, the Supreme Court had played a powerful role in eliminating barriers to equality and justice for all. The Court's leadership in constitutional change and social reform had generated controversy, particularly in legal circles. Significantly, it has been reported that these judicial actions became the focus for scholarly concern. The results had a major impact in various fields of American education. It should not surprise anyone that evidence supports "its impact upon the traditional teaching of public law in colleges and universities."[76]

The knowledge of some members of the audience was probably enhanced by innovative law school programs which many lawyers felt were essential to meet the needs of the times. For example, David Cavers, Professor of Law at the Harvard Law School and member of the Executive Committee of the Association of American Law Schools noted:

> Pressures generated by the social discontent and governmental malfunctioning in our cities will not relent and . . . will lead to major measures and programs . . . designed to attack, and hopefully cure, the evils we are now belatedly recognizing. I shall assume that these measures will include some services to those who now go without and others designed to socialize and civilize the remnant of medievalism in our communities, the treatment of lawbreakers.[77]

Further evidence that these listeners were familiar with the speaker's subject can be offered. For instance, Professor Herbert Wechsler, delivering the Oliver Wendell

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[76]Murphy, p. 468. [77]Cavers, p. 140.

Holmes Lecture at the Harvard Law School in 1959, remarked:

> On three occasions in the last few years Harvard has been hospitable to the discussion of that most abiding problem of our public law: the role of courts in general and the Supreme Court in particular in our constitutional tradition; their special function in the maintenance, interpretation and development of the organic charter that provides the framework of our government, the charter that declares itself the "supreme law."[78]

Wechsler added that previous lectures comprise only a fragment of the serious, continuous attention that the subject is receiving at Harvard as well as elsewhere in the nation.

Pertinent factors seem to indicate how the listeners stood on Marshall's proposition: Recent and dramatic conditions in American society give us cause to pause and seek out the causes and inevitable solution.[79] For instance, in the mid-sixties law students joined the dissident chorus on campuses across the nation, voicing feelings of unease and discontent. Outstanding law professors identified these stirrings as expressive of a generalized dissatisfaction with the course and quality of life in America and/or defects in legal education.[80] Accordingly, it has been noted that by the mid-sixties a substantial number of able

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[78]Herbert Wechsler, "Toward Neutral Principles of Constitutional Law," Harvard Law Review, 73:1, November, 1959.

[79]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643.

[80]Abraham S. Goldstein, "The Unfulfilled Promise of Legal Education," Law in a Changing America (Englewood Cliffs, New Jersey: The American Assembly, Columbia University, 1968), p. 157.

law students did not see a big-firm partnership as a career goal but sought opportunities for public service, especially to the disadvantaged, through the legal profession.[81] Increasingly, prominent members of the legal profession [bench and bar] pursued Continuing Legal Education (CLE) which was offered in approximately thirty-one states. The two-fold purpose of CLE has been explained as follows:

> To improve the professional competency of lawyers, and to bring about greater professional responsibility. By "professional competency" is meant the ability of the lawyer to perform services for his clients in a technically proficient and sophisticated way as counsellor, planner and advocate. "Professional responsibility" . . . refers to other duties and obligations the lawyer assumes, reforming of both procedural and substantive law; providing representation for all persons including the poor and unpopular; serving in civic and public affairs; participating in the work of the organized bar.[82]

In the mid-sixties, the ABA and the American Assembly of Columbia University jointly sponsored a CLE program--"The American Assembly on Law and the Changing Society"--and considered goals for the legal profession in the years ahead in light of the social changes of the present and past.[83]

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[81] Cavers, p. 148.

[82] Irving E. Reichert, Jr., "The Future of Continuing Legal Education," Law in a Changing America (Englewood Cliffs, New Jersey: The American Assembly, Columbia University, 1968), p. 167.

[83] Clifford C. Nelson, "Preface," Law and a Changing America (Englewood Cliffs, New Jersey: American Assembly, Columbia University, 1968), p. v.

Additionally, legal scholars admitted that legal education seems to be in a process of fission in the bar and law schools, a process that reflects changes taking place in our society. Fission in the bar would discontinue the practice of permitting access to the machinery of justice to remain a prequisite of business, organized labor, and the well-to-do and relegating the legally indigent to the overloaded legal aid services and depending upon the least reputable for the administration of criminal justice. Fission in the law school would enable each to adapt their programs and employ their resources to realize more fully their differing potentialities.[84]

It seems that in the mid-sixties the number of lawyers and law students who held attitudes favorable to Marshall's position was increasing. Legal scholars observe that by this period law school programs became more relevant "to the deepening crises in the law which reflected the conflicts in the country's political, economic and social relationships." Similarly, the spectrum of lawyer roles was broadened somewhat by law schools in the design of their curricula to meet contemporary needs. By the late sixties "a new wave of young lawyers" came out well-tuned not to serve power but to shape, distribute, curb, or displace power in accordance with their professional allegiance to a <u>just</u> legal system. Traditionally such initiatives were not

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[84] Cavers, pp. 140 and 143.

considered their responsibility as lawyers. Obviously, the traditional school of thought was giving way to the broader, system-directed focus of the public interest lawyer. Interestingly, such a group expressed their views in the book, With Justice for Some (1970). Writing the introduction for this book, Ralph Nader remarked:

> Most of the topics treated in this volume are continuing front page events. They have been treated in congressional hearings, court testimony, administrative hearings, and other investigations. What these young authors are saying is that this is the law's moment of truth, that it can no longer hide behind the public's ignorance of its failures or the complicity of the organized bar's tokenism when massive re-developments of legal manpower are necessary. And contributors are living their concerns in public interest careers that require a stamina of commitment quite beyond perception or observation. Unlike past reformist legal schools of thought, these young lawyers and increasingly more like them are "staying with it." They are determined to make the law a force in reducing the institutional injustices and in shaping an initiatory democratic system of active and skilled citizens.[85]

Available evidence indicates that audience attitudes probably did not prevent the speaker's achievement of his objectives. Actually, evidence presented earlier implies largely favorable attitudes. Additionally, it should be noted that by this period, time had demonstrated several pertinent factors. For instance, New Deal assumptions that solutions to many pressing problems would come as an automatic spinoff from the achievement of economic security

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[85]Ralph Nader, "Introduction," With Justice for Some, eds. Bruce Wasserstein and Mark J. Green (Boston: Beacon Press, 1970), pp. x-xi.

had proved overly optimistic. Further, it became clear that if the individual's social and political rights were to be raised to the same level as his economic rights, positive governmental action in this connection was essential. Some constitutional scholars contend that the accomplishment of such action seemed a particularly relevant task for the courts. Additionally, the achievement of such rights necessitated the clearing out of a legal thicket of archaic interpretations, which the legislative and executive branches were either ill-fitted or slightly motivated to undertake.[86]

On the other hand, evidence to some extent reveals that for decades law schools neglected or refused to ask hard questions, seek hard data, and provide opportunities for the students to comprehend and prepare to deal with the injustices challenging the pretensions and canons of the profession. In fact, law schools did not see the need to investigate the politico-economic power that deployed the legal system to its special advantage. During the fifties, law schools reportedly paid little attention to the questions dealing with minorities and indigents which the Supreme Court confronted in the sixties. Critics of such practices note: "Aristocratic pedagogy flitted before the students one uncritical image of another of society's alignments--big business, big bureaucracies, racial

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[86]Murphy, p. 460.

oppression, control of information and technology, and hypocritical electoral and legislative processes."[87]

Further, it should be remembered that while eliminating barriers to equality and justice for all Supreme Court leadership generated a variety of reactions from lawyers as well as the general public. Of particular importance was the Court's involvement in constitutional change and social reform which drew mixed responses from legal scholars. For example, it has been reported that conservative and traditional legal scholars were somewhat apprehensive about what they considered revolutionary departures by the Supreme Court. Accordingly, they were inclined to challenge the methods used by the Court to attain its ends. Some members of the legal profession described judicial decisions of the fifties and early sixties as insensitive and heavy-handed.[88] Professor Herbert Wechsler in the Harvard Law School Lecture, "Toward Neutral Principles of Constitutional Law," argued that courts have the power to decide all constitutional cases in which the jurisdictional and procedural requirements are met. He concluded that in these cases decisions must rest on reasoning and analysis which transcend the immediate result and discussed instances in which he believes the Supreme Court has not been faithful to this principle.[89] Constitutional lawyers like Charles L.

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[87]Nader, p. x. [88]Murphy, p. 469.

[89]Wechsler, p. 1.

Black, Jr., of the Yale Law School, acknowledged that the significance of the Warren Court particularly was in the values it set out to achieve and extend through the courts as instruments. By sublimating legal process to moral ends and to the goals of meaningful justice, while managing not to overlook the latest election returns, constitutional lawyers felt that the Court had achieved a new level of statesmanship.[90]

Integrity of Ideas

Additional information about the integrity of Marshall's ideas was revealed during a press conference held June 30, 1954. It should be remembered that in May of 1954 the Supreme Court had rendered a favorable decision in the Brown v. Board of Education case. In other words, separate but equal public education had been declared unconstitutional. As NAACP Director-Counsel, he discussed the practice of holding lawyers' conferences "for the purpose of getting together with lawyers working on the local level and schooling them on how to handle civil rights cases." Marshall added:

> This year the conference concentrated on legal techniques to bring about implementation of the Supreme Court decisions in each community. . . . A meeting was also held on Tuesday afternoon with state conference presidents as the state level is the level of implementation of national policy.
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> A priority schedule was set up . . . . In each state branches will be represented at each hearing

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[90] Murphy, p. 469.

> accompanied by a lawyer or other expert in working out the details of desegregation. Conferences will be aimed at getting schools desegregated on a voluntary basis. We will urge that it be done as soon as possible. We will negotiate as long as the school board will negotiate in good faith.[91]

Marshall's address, "Human Rights--Civil Rights: From Theory to Practice," was delivered during a period in American history in which some progress had been made toward guaranteeing equality and justice for all Americans. However, some conditions which denied constitutional rights of minorities for centuries persisted. Many Americans, particularly blacks, seemed to be growing impatient with the delay of equality and justice under the law.

In recent decades Thurgood Marshall and other lawyers successfully argued an unprecedented number of civil rights cases before the Supreme Court of the United States that helped eliminate many barriers to equal rights for all. However, other lawyers opposed their views. Historians tend to agree that the conflicting views on civil rights can be found throughout American history.

In the mid-twentieth century the Supreme Court, especially the Warren Court, handed down many decisions in the area of civil rights and human rights. Significantly, legal scholars have observed: "In selecting landmarks in human rights law, one quickly focuses on the Warren Court

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[91]"Remarks of Thurgood Marshall at Press Conference June 30, 1954," NAACP Press Release, Dallas, Texas, June 30, 1954, p. 1. (Mimeographed.)

era as the first, and only, era to date in which the United States Supreme Court has considered a significant number of cases in this field."[92]

To find answers to the human rights issues posed in cases coming before them during this period, it is generally agreed that the Court turn to constitutional documents. Further, it has been explained:

> The justices are concerned with three elements of human rights--freedom, justice, and equality. The legal phrases describing these rights are "civil liberties," "due process," and "civil rights," and they are protected in a series of constitutional amendments:
>
> (1) Protections of freedom and civil liberties from interference by the government are found mainly in the First Amendment;
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> (2) Provisions for fair trial and due process of law in the courts and before administrative agencies are found mainly in the due process clauses of the Fifth and Fourteenth Amendments;
>
> (3) Guarantees of civil rights and equal protection of laws for all Americans--regardless of race, creed, color, nationality, religion, or sex--are found mainly in the Thirteenth, Fourteenth, and Fifteenth Amendments.[93]

The justices of the Warren Court looked out their windows at the clamor in the streets, at the rising black militance, at the figure America was playing on the world stage and reached new, but not easy, decisions. The difficulty experienced by the Court became apparent, in part, when difficult cases like Brown v. Board of Education (1954)

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[92]Ann Fagan Ginger, The Law, the Supreme Court, and the People's Rights (Woodbury, New York: Barron's Educational Series, Inc., 1973), p. xi.

[93]Ginger, p. xxix.

had to be argued and re-argued by Thurgood Marshall as Chief NAACP Counsel. Also, sources agree that the Court demonstrated uncertainty on how to carry out their decisions, especially those that sharply changed existing law by returning to the intentions of the framers of the Reconstruction amendments and statutes.[94]

Pertinent to this discussion seems to be the fact that the Court based its famous Brown desegregation decision on psychological grounds as well as legal precedents. Reportedly, "this approach opened the way for endless attacks on the Brown decision, on desegregation, on the Court itself." Apparently, this was not the only basis for the attack on the Court. If so, the attack would have ceased when the Court outlawed discrimination in housing, basing its decision solely on legal grounds. In fact, the Court cited a clearly worded statute prohibiting housing discrimination that had been passed in 1866 and never repealed. However, the attack did not end then nor when the Court ordered southern registrars to obey old voting rights statutes that left no room for interpretation. Therefore, "many commentators have . . . concluded that the attack was based on racism and would have occurred regardless of the basis for the school desegregation decision."[95] In each of these speeches, Marshall acknowledged that the Court's involvement in the process of social change, through

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[94]Ginger, p. 408. [95]Ginger, pp. 408-409.

protecting the right to criticize the status quo, invalidating laws and institutions, such as segregation, which fall short of central constitutional ideals, and reforming the criminal process, provides part of the explanation why the Court has found itself in the center of an intense controversy.

In each of these speeches, Marshall urged listeners, particularly courts and lawyers, to join the Court in efforts to initiate reform which guarantees equal rights and justice and to ensure meaningful enforcement of existing laws. Consistently, Marshall identifies resources available to lower courts and lawyers which could not only implement existing laws but could also create new laws to guarantee equality and justice for all. Interestingly, other authoritative sources have expressed similar views: "The Warren Court did much to reconstruct the Reconstruction, but left much to be done by the lower courts. The justices seemed anxious to require lower court judges to re-read old Reconstruction history and statutes, to rethink their attitudes on race and racism and on the meaning of the Reconstruction amendments."[96]

We should remember that the Congressmen of the 1960s, unlike the Radical Republicans of the 1800s, were not pressing for a new wave of equalitarian legislation. In fact, Congress failed to follow up on the Court's 1954

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[96]Ginger, p. 409.

civil rights decisions until 1957, passing the first Civil Rights Act since Reconstruction. As previously mentioned, even the presidents moved cautiously in the area of civil rights, issuing executive orders on housing and employment discrimination mainly during election campaigns or when popular pressure reached a peak.[97]

Numerous constitutional scholars seem to confirm Marshall's argument that for traditional reasons the Court was qualified as the agent to reinterpret the meaning of the constitutional guarantees of the Bill of Rights and apply them to states and cities in such a way as to produce uniform national standards of criminal justice in federal and state courts. Accordingly, it has been explained:

> What appellants sought who brought cases in these fields was application of a variety of traditional principles and values associated with the American tradition of democratic government to contemporary problems. The Court's historic role had been to construe established statutes and legal language in the context of both initial meaning and intent and current societal demands. The judicial transition directed itself naturally not merely to discovering the precise locus of the productive language of constitutional provisions and statutes, but to ascertaining their thrust and deep and enduring implications as well as their overall philosophical justification for a republican state. Unhampered by the same need for compromise and concern for constituency expedient for the other two branches, the judiciary was able to move quickly and directly toward the assuring of abstract public values, such as justice, fairness, natural rights, and morality in individual and public relationships, in a far less qualified way. It was thus in a unique position to act, as one commentator put it, as the "conscience of the nation."[98]

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[97]Ibid. [98]Murphy, p. 461.

In this speech, the main premises from which Marshall argued emanated from his personal and professional experiences as well as his attitude toward the complex problems of this period in American life. Briefly, this speech reveals the following major premises:

(1) For centuries our constitutional democracy has denied minorities, especially Negroes, equality and justice under law.

(2) Recent Supreme Court leadership in the struggle for racial equality stems from two profound insights: first, the status quo had fallen short of a central constitutional ideal, the egalitarian ideal, and secondly, all other societal institutions, especially the more representative institutions, refused to assume a major responsibility in working toward the realization of this ideal.

(3) Lower courts and members of the bar should share, not criticize, the responsibilities of bridging the gap between equality and justice in theory and in practice.

Organization

This section examines the speaker's address in terms of rhetorical craftsmanship, considering the speech from the point of view of its basic construction and the total plan of organization with reference to the peculiar audience conditions to which it was presumably accommodated. Specifically, the purpose, the proposition and the structure of this speech will be considered.

Purpose. If we remember the turbulent conditions of this period and if we remember that as Solicitor General Marshall resumed involvement in the affairs of this country as an advocate, it should not be surprising that Marshall's

purpose seems to be to convince or persuade. Frequently, the speaker who seeks to convince or persuade is an advocate, according to some authorities in the field of speech.[99] Study of this speech reveals that Marshall recognized the pressing problems of his time and assessed pertinent needs. Hence, the speaker not only provided his audience with information but apparently sought belief in and action on his proposition.

Proposition. Examination of this speech reveals the following proposition: We must seek causes of and inevitable solutions for barriers in American life which are based on minority status whether because of race or financial or both. This statement appears to clarify the plan of the speech. Further, it seems to indicate the subject matter that will be treated. Even if the speaker's proposition challenged the beliefs and conduct of some members of this audience, it very likely enabled the audience to listen intelligently.

Structure. Typically, this speech consists of three major divisions. One can easily perceive an introduction, a body, and a conclusion.

In this speech, Marshall's introduction (consisting of 265 words) seems to be appropriate for three reasons:

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[99] McBurney and Wrage, p. 37.

(1) it arouses favorable attention; (2) it establishes common ground; and (3) it issues a challenge. For instance, Marshall's reference to the occasion, the theme, and the issue he considered paramount probably served to stimulate the attention of the audience and to prepare the listeners for the discussion to follow. Marshall's comments about the appropriateness that "we" celebrate Law Day USA, his use of words by ABA's president, and his reference to "our" judicial system appear to establish identification and relationship with the audience. Rhetoricians maintain that people naturally listen more readily to a speaker they believe is like them, shares their feelings and knows their problems.

The body of this speech contains three contentions which appear to support the speaker's proposition. Marshall's main ideas in this speech are somewhat similar to those presented in previous speeches. However, difference in arrangement and emphasis seems evident. The main ideas may be summarized as follows:

I. Since the oldest and most consistent example of mistreatment of minorities in America has focused upon Negroes, a fair understanding of our present system requires a glimpse into the past.

II. In the last decade, the Supreme Court, through its power of invalidation and its involvement in reforming the criminal processes, has assumed leadership in removing barriers in American life based on minority status.

III. The time has come for local courts, local legislatures, and all members of the bar to share the task of reform which removes barriers in American life based on minority status; thereby, bridging the gap between theory and practice in the area of human rights and civil rights.

The body of this speech is one of the longest of those covered in this study. It consists of more than 3,000 words.

Essentially, the outline reflects several aspects of the problem-solving pattern: (1) review of the problem--its origin, its growth to urgency, and its present dangers; (2) enumeration and analysis of possible solutions; (3) recommendation of the best solution with support that it will solve the problem without creating worse difficulties; and (4) appeal to audience to act upon the recommendation.[100]

Rhetoricians often contend that logical patterns, particularly the problem-solving pattern, are the most useful; for questions that commonly occasion the use of rhetoric are likely to be problems in need of solution, and the dialectic essential to the discovery of solutions may furnish the most effective structures for communication.[101] It is not surprising that Marshall employed significant aspects of the problem-solving pattern in his speech of April 27, 1966.

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[100]Bower Aly and Lucile Folse Aly, A Rhetoric of Public Speaking (New York: McGraw-Hill Book Company, 1973), p. 180.

[101]Ibid.

Further, the pattern of this speech can be considered appropriate if it increased the impact of the speaker's ideas, enabling the listeners to understand the speaker and to share the ideas, whether they agree or disagree.[102] Also, the pattern seems suitable to the speaker's purpose and central idea.

Marshall's conclusion is typically brief, consisting of about 102 words or one paragraph. The speaker said:

> The gap between theory and practice is being shortened but there is much to do. Much for all of us to do. Once a year we stop to evaluate our legal framework on Law Day. Too often we consider that sufficient to hold us for another year. We return to the old rut of "business as usual." Regardless of how much our government does or will do in the future, we will not close the gap until each of us makes Law Day for every day in the year and each takes this as his individual personal responsibility.[103]

Marshall uses standard rhetorical devices in this conclusion. For example, it seems that he summarizes his main points, makes a call for action to enlist support for his proposition, and presents a prediction of the future. This conclusion appears to be designed to fulfill the speaker's purpose and to gain the desired response from most listeners.

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[102] Aly and Aly, pp. 184-185.

[103] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

Logical Appeals

The validity of Marshall's reasoning in his "Law Day" speech can be determined by constructing syllogisms from his main points and testing them according to the rule of logic. Three hypothetical syllogisms can be framed as follows:

(Major Premise)	If laws and practices in America for centuries largely protected rights of the majority, rights of minorities, especially Negroes, were not protected.
(Minor Premise)	Laws and practices in America for centuries largely protected the rights of the majority.
(Conclusion)	Rights of minorities, especially Negroes, were not protected.
(Major Premise)	If Supreme Court actions of the last decade have protected some rights of minorities, some barriers in American life based on minority status have been removed.
(Minor Premise)	Supreme Court actions of the last decade have protected some rights of minorities.
(Conclusion)	Some barriers in American life based on minority status have been removed.
(Major Premise)	If new laws, practices, and judicial reform fulfill constitutional guarantees of equality and justice for all Americans, all barriers in American life based on minority status can be removed.
(Minor Premise)	New laws, practices, and judicial reform fulfill constitutional guarantees of equality and justice.

Conclusion) All barriers in American life based on minority status can be removed.

Close examination of this speech reveals that Marshall often implied rather than expressed some of his premises. However, the syllogistic reasoning can be considered valid since in each case the minor premise affirms the antecedent and the conclusion affirms the consequent. Apparently, the speaker's reasoning is sound.

Having examined the speaker's reasoning, we now turn to his use of evidence. The critic must determine the forms of support used by the speaker to gain understanding, acceptance, and action.

Marshall seems to support his conclusion that for centuries the rights of minorities, especially Negroes, were not protected by laws and practices. Accordingly, he cited specific instances that historically mistreatment of minorities has focused upon Negroes. Typically, the speaker argues from circumstantial detail:

> Since the oldest and most consistent example of mistreatment of minorities has focused upon Negroes, a fair understanding of our present problem requires a glimpse into the past. Being a constitutional democracy we first look to our basic statutory structure. Beginning with the Declaration of Independence we remember that Jefferson sought to have slavery condemned in the Declaration of Independence. He was unsuccessful. Secondly, the constitution of our government expressly recognized slavery and gave legal support to it. . . .
>
> During the early part of the 19th century, despite the great drive of abolitionists and others, there was always the recognition of the so-called inferiority of the Negro--even the free

> Negro. There were instances of refusal of admission of Negroes to abolitionist meetings. . . .
>
> After the Civil War, Congress made its first efforts toward removing state imposed racial discrimination by passing the proposed Fourteenth and Fifteenth Amendments and Civil Rights Acts. . . .
>
> The supreme effort of the Civil War, the rough struggle to get the bills through Congress and the urgency of expanding our country to the West Coast, exhausted the liberals and the struggle for protection of the Negroes was abandoned after the Reconstruction Era.
>
> The executive branch of government never had any intention of moving in. Finally, Supreme Court decisions in the Civil Rights cases (1883) and Plessy v. Ferguson (1896) were interpreted as final abandonment of efforts of the federal government to protect the civil rights of Negroes. The states resumed much of the pre-war practices of deliberate racial discrimination.[104]

Obviously, the speaker's evidence clarified and amplified the contention. In all probability, the audience was able to understand and possibly to share the speaker's conclusion.

The speaker argued deductively using assertions, examples, and explanations as supporting materials. For example, Marshall remarked that decades into the twentieth century "neither the executive nor legislative branches of the federal government could be persuaded to move." But "the federal courts found a way to fill the vacuum." He asserted, "Through its power of invalidation the Supreme Court has wrought fundamental changes in the structure of our society." Continuing, Marshall chose Brown v. Board of

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[104] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643-24644.

Education as an example which he explained in terms of its impact. In part, he said that segregation was constitutionally condemned and stripped of all moral predicates.[105]

Marshall asserted that Supreme Court's involvement in reforming our criminal processes which began in the 1900s has intensified recently, removing anachronisms which have no place in our society. Then Marshall said, "Guaranteeing the right to counsel and protecting the personal rights of the Fourth and Fifth Amendments through the exclusionary rules have been among the most significant changes." Commenting that it is not necessary to add other instances rather there exists the need to analyze these developments "on a more institutional level," the speaker proceeds to explain the traditional and unique aspects of judicial reform.[106]

Marshall admits that progress has been made in reforming the judicial process but asserts that "gross imperfections remain." To illustrate the former, he said, "as a national proposition we have come a long way from those initial outrages perceived in Brown v. Mississippi and Powell v. Alabama." Regarding the latter, he said: "Pre-arraignment procedures in the station house; bail; pre-trial discovery; the admission of evidence dealing with the

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[105]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

[106]Ibid.

accused's prior criminal record; the right to counsel in specialized proceedings, such as collateral attacks, commitment proceedings, and revocation-of-parole proceedings. These are just some of the areas in which radial reform will take place." Marshall adds that this is not a prediction but an invitation to all to join in this task of reform.[107]

Finally, Marshall asserts that the time has come when the burden of reforming the criminal process must be shared. Then he opined:

> Sharing the burden will add to the resources that can be used in this enterprise; it will tend to gain a more popular backing for the reform when the reform is initiated by institutions closer to the citizenry. . . . Members of the bar . . . through their professional associations can initiate and press for this reform, and each lawyer engaged in a criminal trial, whether prosecutor or defense counsel, possesses a special responsibility and power . . . to ensure that the trial conforms to our highest traditions of fairness and justice.[108]

At this point in his speech before the Miami Law Day Luncheon, Marshall acknowledges the controversy surrounding Supreme Court decisions in the same words that he used in the speech before the Federal Bar Association. However, he does not conclude his speech immediately.

The preceding discussion seems to indicate that the speech provided a variety of evidence to support his contentions. Also, it can be assumed that his evidence helped the listeners understand and respect his ideas. Assuming the audience largely agreed with the noble proposition, the

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[107]Ibid. [108]Ibid.

reasoning and evidence presented by the speaker probably earned acceptance of the speaker's ideas and proposal for action.

Emotional Appeals

Having examined the speaker's logical appeals, we now turn to an examination of his emotional appeals. Brembeck and Howell have defined persuasion as "the conscious attempt to modify thought and the action by manipulating motives of men toward predetermined ends."[109] With this in mind, this section focuses on Marshall's use of emotional appeals.

Generally speaking, Marshall seems to repeat pathetic proof in these speeches to lawyers and law students. Specifically, his emotional appeals consist of those to justice and fair play and those to social responsibility and professional pride.

Speaking in Miami, Marshall seems to appeal to the listeners' sense of fair play and justice. Asserting that history reveals that from the very beginning our system of government crystalized the status of Negro Americans, Marshall adds: "In fact, two worlds were being set up within the same democracy." Continuing, Marshall says:

> During the early part of the 19th century despite the great drive of abolitionists and others, there was always the recognition of the so-called inferiority of the Negro--even the free Negro. There were instances of refusal of admission of Negroes to abolitionist meetings.

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[109] Brembeck and Howell, p. 24.

> All of this was brought about by the propaganda of many southern professors. These men, for the sole purpose of continuing slavery, managed to convince others that scientific studies actually proved the inferiority of Negroes, and it had its effect.[110]

In this speech, Marshall seems to repeat the following appeal to justice and fair play.

> Yet on the constitutional horizon there looms the problems of the large metropolitan ghettos, both a product and a cause of fears and prejudices of our generation, and the massive injustices inflicted on the poor; the "other America," is still with us. The hope is not that the Supreme Court will singly take up the burden of eliminating these injustices through requiring further reform, but that the other social and political institutions will make it a joint enterprise, if not their special responsibility.[111]

Addressing the Miami law students and lawyers, Marshall appeals to the audience's sense of professional pride and social responsibility.

> The gap between theory and practice is being shortened but there is much to do. Much for all of us to do. Once a year we stop to evaluate our legal framework on Law Day. Too often we consider that sufficient to hold us for another year. We return to the old rut of "business as usual." Regardless of how much our government does or will do in the future, we will not close the gap until each of us makes Law Day for every day in the year and each takes this as his individual personal responsibility.[112]

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[110] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24643.

[111] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

[112] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24645.

In these speeches, Marshall consistently implies or states the following: "Law cannot only respond to social change but can initiate it, and lawyers, through their every day work in the courts, may become social reformers."[113]

As a successful trial lawyer for more than three decades, Marshall obviously realized the significance of stimulating the emotions of listeners. Undoubtedly, he recognized that the skillful and judicious use of pathetic proof can move judges and juries to act in accordance with the speaker's recommendation. On this occasion, Marshall included pathetic proof which reinforced reason and met rhetorical requirements.

Speech of March 8, 1967

Occasion and Audience

Generally, some of the factors which shaped the occasion when Marshall delivered his speech on April 27, 1966, influenced the speaker's choice of subject, "The Law and the Quest for Equality." Equality and justice under law for all Americans continued to be more assumption than fact.

Particularly, it should be kept in mind that conditions which denied equality and justice for minorities in America had not changed significantly during the mid-sixties. The executive and legislative branches of government, in the

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[113]Thurgood Marshall, "Law and the Quest for Equality," Washington University Quarterly, Winter, 1967, p. 7.

opinion of many, did little to remedy problems in the area of civil rights. For example, President Johnson felt military priorities came first and Congress was reluctant to act on civil rights matters. However, in 1967 the Supreme Court continued its controversial involvement in protecting the rights of many Americans. For example, "in a series of cases involving the omission of Negroes from juries and grand juries, the Court struck consistently at discriminatory local practices" and exercised judicial power in cases involving equal rights to housing.[114] But much remained to be done in the area of civil rights. Accordingly, peaceful protests continued under the leadership of Dr. Martin Luther King and others. The "Black Power" movement escalated under leaders like Stokely Carmichael.

On this occasion, Solicitor General of the United States Thurgood Marshall delivered the nineteenth annual Tyrrell Williams Memorial (TWM) lecture sponsored by Washington University Law School (established in 1899) in St. Louis, Missouri. The TWM Lectureship "was established in the School of Law of Washington University by alumni of the school in 1949, to honor the memory of a well-loved alumnus and faculty member whose connection with and service to the school extended over the period 1898-1947."[115]

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[114] Murphy, pp. 417-418.

[115] Thurgood Marshall, "Law and the Quest for Equality," p. 1.

Apparently, the TWM Lectureship brought to the Law School a distinguished lecturer each year. Previous speakers had been well-recognized members of the bar, legal scholars and jurists; including Supreme Court Justices Felix Frankfurter, William O. Douglas, and William J. Brennan.[116]

The Washington University Law School employed the "case method" of instruction.[117] With this in mind, Marshall's speech which utilizes this method to some extent appears suitable.

Perhaps, some indication of the general nature of the audience that Marshall addressed on March 8, 1967, is suggested in the following passages from the school catalogue:

> The program of the School of Law is designed to help students develop an understanding of law, the processes by which it operates, and the social, economic, and political context in which it functions. Without . . . ignoring technical legal knowledge, the School of Law recognizes that legal education must be broadly based for its recipients to contribute effectively to shaping society's goals and developing the means of achieving these goals.
>
> The law is not, and cannot be, static, and the man who is "learned in the law" is the man who has developed the ability to find sound solutions to new problems by adapting and using, rather than merely echoing, the teachings of the past.[118]

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[116] Bulletin of Washington University 1969-1970: The School of Law (St. Louis, Missouri: Publication of Washington University, 1968), p. 29.

[117] Bulletin of Washington University 1967-1968: The School of Law, p. 6.

[118] Bulletin of Washington University 1967-1968: The School of Law, p. 9.

This audience was composed of approximately two hundred thirty law students, numerous faculty members, and some local attorneys. It seems likely that the selection of Marshall as speaker for this special occasion was to a large extent based on his illustrious familiarity with current problems, on knowledge of his prominence in the legal profession in general and on his unparalleled success as a constitutional lawyer. Evidence presented earlier disclosed that many lawyers respected Marshall as an advocate, a trial lawyer, a federal judge and as the first black Solicitor General of the United States. In 1967, Marshall was described as a Supreme Court nominee whose qualifications were "dramatically and compellingly established."[119] For several decades, Marshall's career seems to have paralleled the Supreme Court's new interpretation of constitutional amendments. When Marshall spoke to this audience rumors of his nomination for Supreme Court Justice were persistent. Indeed, a few months later he was nominated for this post by President Johnson who emphasized Marshall's exceptional qualifications by saying that Marshall had "already earned his place in history."[120] The members of the audience like most Americans, especially lawyers and the people he

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[119]"The Supreme Court: The First Negro Justice," Time, September 8, 1967, p. 16.

[120]Randall W. Bland, Private Pressure on Public Law--The Legal Career of Justice Thurgood Marshall (Port Washington, New York: Kennikat Press, 1973), p. 151.

represented, undoubtedly were well-acquainted with the speaker and his subject.

Specific information about how they stood on the speaker's proposition and attitude of audience toward the speaker's point of view is not available. However, the school's catalogue revealed some data which can be considered: (1) the law students serve as interns with governmental agencies in St. Louis, Missouri; (2) the faculty (seventeen full-time and twelve part-time teachers) received legal training in "better known law schools of the country" and had wide experience in teaching, practice, governmental service and research; and (3) the library was one of the few in the country "designated for United States Supreme Court Briefs."[121] Some other interesting facts about the students in attendance include the following: (1) they came from thirty different states and three foreign countries; (2) they had been admitted to the law school on the basis of their exceptional academic achievement; and (3) while attending Washington University Law School the students worked for the Legal Aid Society which provided services to persons unable to afford an attorney, under the supervision of local attorneys. Students who have demonstrated ability in the second- and third-year classes are given the fullest responsibility consistent with their experience and ability.

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[121] Bulletin of Washington University 1967-1968: The School of Law, p. 7.

Further, students in their second and third years who have completed the course in Criminal Law participated in the Voluntary Defender Program (VDP). Participants in VDP assisted attorneys appointed to defend persons charged with a crime who are unable to afford legal representation. Further, the catalogue reveals: "Participation in this program not only gives the student invaluable experience, but also gives the attorney additional assistance to ensure that every defendant in a criminal proceeding gets a fair trial and is adequately represented by vounsel."[122]

Other factors imply that Marshall's point of view was acceptable to his listeners. For example, it has been noted that by the mid-sixties young lawyers and law students were inspired by legal heroes like Justice William O. Douglas. Justice Douglas, prior TWM Lecturer, has been characterized as a distinguished lawyer who "long kindled the hope that our legal system can evolve to be sensitive to the needs of all citizens."[123] Additionally, these lawyers and law students were taking more active measures, by the late sixties to reform the profession.[124] According

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[122] Bulletin of Washington University 1967-1968: The School of Law, pp. 10 and 38.

[123] Eric E. Van Loon, "The Law School Response: How to Sharpen Students' Minds by Making Them Narrow," With Justice for Some, eds. Bruce Wassestein and Mark Green (Boston: Beacon Press, 1970), p. 342.

[124] Van Loon, p. 343.

to some lawyers, Marshall had an activist legal outlook.

Presumably, the TWM Lectures were planned to provide the greatest possible benefits for the audience. The speaker for this occasion would be one whose proposition and point of view those assembled respected very highly. Also, it is probable that few, if any, attitudes of hearers would interfere with the speaker's achievement of his objectives.

Integrity of Ideas

As explained earlier in this study, Marshall's life and career had been dedicated to the pursuit of equality and justice under law for all Americans. Marshall's preparation, training and experiences apparently equipped him to deal effectively with ideas pertinent to this subject, "Law and the Quest for Equality."

In this connection several factors seem important. This man had "captained the long-drawn legal battle for equal rights during his 23 years as counsel for the NAACP."[125] This man argued and won an unprecedented number of cases before the Supreme Court and whose famous victory in Brown v. Board of Education was the Court's ruling that segregated schools are in violation of the Fourteenth Amendment. This man was appointed federal judge by President Kennedy and the first black Solicitor General by President Johnson.

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[125]"The Supreme Court: Negro Justice," Time, September 23, 1967.

This man, a few months after this speech, would be nominated the first black Associate Justice of the United States Supreme Court.

Marshall wrote an article, "Mr. Justice Murphy and Civil Rights," published in the Michigan Law Review of 1950. This article focuses on Justice Murphy's genuine devotion to equalitarian principles of our fundamental law, particularly in the field of civil rights. His description of Murphy resembles characterizations of Marshall by some of his associates: "In the field of civil rights, Mr. Justice Murphy was a zealot. To him, primacy of civil rights and human equality in our law and their entitlement to every possible protection in each case, regardless of competing considerations, was a fighting faith."[126] Marshall discusses the major cases of the 1940s involving fundamental issues affecting civil rights of unpopular minorities which "clearly demonstrate Justice Murphy's contribution to the basic law of the land."[127] Of some importance is that this article afforded Marshall an earlier opportunity to express beliefs that he repeated in speeches as Solicitor General.

Studying Marshall's speeches and his career, one is convinced that the speaker believed strongly in the causes

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[126]Thurgood Marshall, "Mr. Justice Murphy and Civil Rights," Michigan Law Review, 48:745, 1950.

[127]Thurgood Marshall, "Mr. Justice Murphy and Civil Rights," p. 746.

for which he spoke. Members of the legal profession, as well as the general public, have attested to his exceptional knowledge and his ability to articulate his ideas skillfully whether in the courtroom or on the lecture platform. In particular, Marshall was renown as an outstanding authority on constitutional law and a courageous champion in the struggle to achieve equality and justice under law for all Americans.

Significantly, the speaker reiterated ideas which he had presented in earlier speeches. However, it should be noted that the emphasis shifted, from speech to speech, and the supporting material varied. These matters are examined more closely later in this study.

In this speech, Marshall discusses the Supreme Court's involvement in legal reform which eliminated many inequalities and injustices in American life. As the Court moved actively to extend constitutional protection to minorities, scholars of this period turned close attention to the impact of Supreme Court decisions.

Further, constitutional historians generally agree that the average American of the 1960s was conscious of the changing role of the Supreme Court in American life. Whether they approved or appreciated the Court's new position of prominence, many Americans observed its actions closely. To some, the Court seemed to be pushing ahead of public opinion, assuming the lead in setting forth

new standards of social control and public behavior and becoming the most innovative of the three branches of the American government.

The evolution of the Court's new role and its ramifications have been explained as follows:

> Its attainment of its new position seemed in retrospect the inevitable result of the public law revolution of the 1930s and its impact on American life and institutions. The overwhelming popular endorsement, at the ballot box, of the New Deal had constituted a clear public acceptance of big government. It was the government's task, from here on, a majority agreed, to take actions in the public interest that in a complex and enormous industrial state an individual could not meaningfully take for himself. Thus the condition of the average individual, his protection, against massive impersonal forces such as poverty, unemployment, the business cycle, and his general lack of economic security, which the depression had demonstrated a laissez-faire system could not insure, were now to be turned over to government, whose responsibility it was to afford remedies and solutions. New Deal leaders argued persuasively that only if such elemental economic guarantees were achieved could man be free to cope with the great range of social and political problems chronically confronting him. By the 1950s, the permanence of such an approach to public policy became clear. Eight years of Eisenhower Republicanism demonstrated that even the nation's more conservative party was prepared to preserve and extend rather than reverse or alter the basic New Deal programs.[128]

Also, as noted earlier, the Supreme Court's involvement in the area of civil rights and human rights was praised and criticized. The extent of the controversy surrounding Supreme Court decisions during the decades following the 1930s seems evident in the following passage

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[128]Murphy, pp. 458-459.

from a magazine article--"What 36 State Chief Justices Said About the Supreme Court"--of October 3, 1958:

> The chief justices of 36 States recently adopted a report critical of the Supreme Court of the United States, declaring that the Court "has tended to adopt the role of policy maker without proper judicial restraint."
>
> This report, approved by the chief justices of three fourths of the nation's States, found that the present Supreme Court has abused the power given to it by the Constitution. The Court is pictured as invading fields of Government reserved by the Constitution to the States.[129]

It seems particularly significant that this entire article was included as an appendix to Senator Sam Ervin's (D-North Carolina) views in the 1967 Report Together with Minority Views of Hearings on Nomination of Thurgood Marshall to be an Associate Justice of the Supreme Court of the United States. It should be remembered that Ervin had opposed Marshall's nomination saying "Judge Marshall will align himself with the judicial activists now serving on the Supreme Court."[130]

As the Supreme Court's decisions drew sharp and mixed responses, the Court responded that this was its purpose. Specifically, the response of the Warren Court has been explained as follows:

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[129]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Executive Report No. 13, 90th Congress, 1st Sess., August 21, 1967 (Washington: Government Printing Office, 1967), p. 18.

[130]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Executive Report No. 13, 90th Congress, 1st Sess., August 21, 1967 (Washington: Government Printing Office, 1967), p. 16.

> There was no reason, its majority felt, why historically professed American ideals and their practice could not be harmonized and why the hypocrisy and immorality that had pervaded the behavior of earlier generations of Americans--Americans who while professing deep belief in liberty and equality found innumerable ways to qualify and destroy each--could not be eliminated. Thus, while the Court was conscious of playing a new power role, and acting as a balance wheel in protecting the rights of the individual against the power of business, big labor, and big government, it was also conscious of its obligation to make American traditions and values operative in the context of a modern industrial society even in face of the reluctance or obstruction of the two branches.[131]

The merit of Marshall's ideas, in part, can be measured by the fact that other successful lawyers and distinguished legal scholars expressed similar views. Although some of these persons and their views have been mentioned earlier in this study, perhaps others should be added here. For example, in the late 1960s, Justice Tom C. Clark wrote:

> Although the Bill of Rights was included in the Constitution by ratification as early as 1791, some Amendments . . . are not enjoyed by all citizens today. . . . Although the Fourteenth Amendment is now in its 101st year, many of the fruits of its clauses are not enjoyed by millions of our citizens. Indeed, the news media report every day of the many anguished cries for equal justice.[132]

In 1967, Chief Justice Earl Warren said:

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[131] Murphy, pp. 461-462.

[132] John P. Frank, American Law: The Case for Radical Reform (Toronto: The MacMillan Company, 1969), pp. xiii-xiv.

> In a century which has been characterized by growth and modernization in science, technology and economics, the legal fraternity is still living in the past. We have allowed the mainstream of progress to pass us by. . . . Our failure to act becomes alarming when a competent district judge must admit in testimony before a Senate committee that unless something new and effective is done promptly in the area of judicial research, coordination, and management, the rule of law in this nation cannot endure. When justice is denied to any of our citizens because of faulty administration, our failure to act becomes inexcusable.[133]

Writing American Law: The Case for Radical Reform (1969), John P. Frank, described by Justice Clark as a distinguished scholar and author, an effective advocate, and a most successful lawyer and well qualified to speak on the shortcomings of our judicial system and to suggest methods for its improvement,[134] comments on legal reform in America:

> If we are to have a new agenda . . . in the balance of this century, we must develop far more radical ideas than we have been exploring of late. We need to reconsider our legal system from the ground up. We need to develop plans
> 1. To reconstruct the institutions of the law.
> 2. To reconstruct the job we expect the law to do.
> 3. To reconstruct the way we do that job.[135]

In this speech, Marshall seems to repeat major premises mentioned earlier in this study. The extent to which the speaker shifts emphasis and varies support should become apparent as this discussion proceeds.

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[133] Frank, pp. 2-3.

[134] Frank, p. xix.

[135] Frank, pp. 32-33.

Organization

The disposition of this particular speech will be explored in terms of the speaker's purpose, his central idea and structure.

Purpose. Previewing the main points to be covered in the body of his lecture at Washington University Law School, Marshall implies that his purpose is to inform. However, upon close examination one is inclined to assume that once more the speaker used information to persuade his listeners to act in accordance with his recommendation which he makes at the end of this address. Assuming that the speaker's purpose met the needs of the audience and the occasion, it can be considered acceptable.

Central idea. Perhaps, Marshall implies the central idea of this speech, "Law and the Quest for Equality," when he said: "Actually the subject involves several themes: the synergy of law and social patterns; the promotion of reform through and by means of existing legal means and doctrine; and the changing role of a lawyer in society."[136] Study of this speech reveals that these were the general topics that Marshall developed in the body of this address. This information in all probability enabled the audience to listen intelligently to his message.

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[136]Thurgood Marshall, "Law and the Quest for Equality," p. 1.

On the other hand, he makes statements in the conclusion of this speech which appear to represent his central idea. In part, he remarked:

> I am sure you will agree that the force of law--its capacity to initiate and mold change--is a major force in society, a force which lawyers are most called upon to shape. From the early days in this country's history, it has been the traditional task of lawyers to mediate between principle and practice, between man's heritage and his hopes.[137]

But these remarks seem to recapitulate the main points. Maybe, the speaker decided not to state the central idea initially.

For purpose of this study, it seems that Marshall's central idea or proposition might be stated as follows: Historically, and traditionally, laws and lawyers have produced far-reaching social changes which coincided with and created a climate conducive to new legal and social relationships; the possibilities of social change and legal reform today are even greater; but we must dedicate ourselves to the task of ensuring equality and justice for all Americans. With this in mind, perhaps Marshall decided not to include a central idea that would be so lengthy.

Structure. Generally speaking, this speech contains an introduction, a body, and a conclusion.

Specifically, Marshall's introductory remarks seem to promote friendliness and respect, to lead into the

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[137]Thurgood Marshall, "Law and the Quest for Equality," p. 7.

subject quickly, and to reveal the direction the speech is going to take. Of particular importance is the fact that in this relatively brief introduction, containing about 135 words, Marshall employs common devices for beginning a speech. For instance, Marshall refers to a previous speaker and to the occasion. Also, the speaker extends an honest compliment to the audience and establishes common ground coupled with a personal reference. For example, Marshall said:

> Dear Lesar, ladies and gentlemen.
> I was happy to accept Dean Lesar's invitation to deliver the nineteenth Tyrrell William Memorial Lecture. Unlike your lecturer of last year, I did not have the pleasure of knowing Professor Williams; however, from my own experience with inspiring teachers, I can understand the feeling which prompted you to establish a lectureship in the professor's memory, and I hope that I can meet the standards of those who have occupied this podium previously.[138]

Continuing, Marshall identifies the subject of his address and previews his main points: "I have defined my subject as 'Law and the Quest for Equality.' Actually the subject involves several themes: the synergy of law and social patterns; the promotion of reform through, and by means of, existing legal means and doctrine; and the changing role of a lawyer in society."[139]

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[138]U.S. Department of Justice, "Law and the Quest for Equality," Tyrrell Williams Lecture by Honorable Thurgood Marshall, Solicitor General of the United States, St. Louis, Missouri, March 8, 1967, p. 1. (Mimeographed.)

[139]Ibid.

In terms of word distribution, the body of this speech consisted of about 3,000 words. In the body of this speech, Marshall apparently develops the topics that he mentioned in the introduction. However, it seems that this part of the speech, largely, follows a chronological pattern. The following sentence outline reveals how the main ideas in the body of this speech supported the previously mentioned central idea:

I. Pertinent cases and legislation during the nineteenth century disclose legal recognition of equality for legitimization of inequality.

   A. In the Dred Scott case (1857), the Supreme Court decided that Scott could not be a "citizen" of a state within Article III of the federal Constitution, and that, in any event, he was not free by his having lived in free territory because Congress had no power to deprive slaveowners of "property" rights by prohibiting slavery in certain territory.

   B. After much travail and a costly war, the Thirteenth, Fourteenth and Fifteenth Amendments were adopted; each of which contained an innovative provision, giving Congress the power to enforce the amendments "by appropriate legislation" . . . which the Reconstruction Congresses exercised in various civil rights legislation but the Supreme Court struck down some of those provisions in the Civil Rights cases in 1883.

   C. In Plessy v. Ferguson (1896), the Supreme Court upheld a state statute prescribing the racial separation of railroad passengers within the state; it reasoned that establishing "separate but equal" facilities did not violate the Fourteenth Amendment; the Court legitimized and gave impetus to the myriad laws and customs, described as "a pervasive, official system of segregation which carries from cradle to grave. . . ."

D. Some indication of hope for the quest for equality through the courts was evident in decisions rendered in the Strauder case (1880), which in effect held unconstitutional as state statute prescribing that white males only could serve on a jury, and Yick Wo v. Hopkins (1887), which condemned administrative discrimination against Chinese as a class.

II. During the twentieth century equality and social reform have been promoted largely by litigation in the courts.

A. The NAACP's participation in the struggle for equality and justice was evident in Quinn v. United States (1915), in which the grandfather restrictions on voting were struck down; Buchanan v. Warley (1917), in which racially restrictive zoning ordinances were declared unconstitutional; Nixon v. Herndon (1927), which held state laws barring Negroes from primary elections to be a violation of the equal protection clause of the Fourteenth Amendment; and Moore v. Dempsey, the mob-dominated trial of a Negro in which the Supreme Court decided that a new trial must be held.

B. In the 1930s, NAACP lawyers argued cases for the elimination of inequality and discrimination not without occasional setbacks; but the Supreme Court continued to rule against discrimination in the selection of grand and petit jurors and, in various ways, to insure the fairness of criminal proceedings against Negroes; it struck down abhorrent police practices, such as the beating of Negroes suspected of a crime in order to obtain confessions in Brown v. Mississippi (1936); in the Scottsboro cases (1932 and 1935), the Court first ruled that the trials were unfair because the defendants did not have effective assistance of counsel and later that the trials were unfair because of discrimination against Negroes in the selection of juries.

C. During the next decades, Supreme Court rulings eliminated discriminatory practices in numerous aspects of life, including disfranchisement of Negroes through the

ingenious white primary (Smith v. Allright; 1944), gerrymandering (Gomillion v. Lightfoot; 1960), and other such schemes; nullifying "sophisticated as well as simple-minded modes of discrimination" (Lane v. Wilson; 1939), striking down peonage laws (Taylor v. Georgia; 1942), maintenance of separate dining cars under the Interstate Commerce Act (Henderson v. United States; 1950), declared enforcement of racially restrictive covenants to be violative of the Fourteenth Amendment (Shelley v. Kraemer; 1948 and Barrows v. Jackson; 1953), discrimination in higher education (McLaurin v. Oklahoma State Regents (1950).

D. During the early 1950s, many states had undertaken to eliminate racial discrimination, and . . . the executive branch of the federal government had not only supported the petitioners in several cases but had affirmatively sought to eliminate discrimination in the services, in governmental employment, and in the insurability of homes in mixed neighborhoods through FHA, indicating that the impetus for change stimulated by . . . things other than the Court decisions . . . mentioned.

E. Finally, in the School Segregation Cases of 1954 and 1955, the Supreme Court held segregated public education unconstitutional, eliminating one of the two pillars of the caste system (the other being disenfranchisement) but the decision was not an easy one to enforce.

F. The story of the quest for equality does not end with the School Segregation cases; it branches out in several directions, most notably to legislation: the Civil Rights Acts of 1957, 1960, and 1964, and the Voting Rights Act of 1965.

III. The role of lawyers in society is changing to include responsibility for social reform and the quality of legal services for the poor, which ensures equality in access to justice.

A. Lawyers have a duty in addition to that of representing their clients; they have a duty to represent the public, to be social reformers.

B. Lawyers can provide the quality of legal services for the poor, which ensures equality in access to justice.

Marshall begins this discussion with an historical background of pertinent cases, social patterns and legislation which have contributed to the racial discrimination and inequality in America for several centuries. Next Marshall discusses endeavors of the NAACP and the three branches of the government, particularly the judicial branch, to eliminate discrimination and to promote social reform from 1915-1967. Marshall's third main idea asserts the need for lawyers to become social reformers to ensure equality in access to justice. This discussion presumably strengthens beliefs of the listeners at times and at other times it seems to attempt to get any undecided hearers to make up their minds. The speaker appears to seek belief and ultimately overt behavior.

Marshall's conclusion seems to meet rhetorical requirements. The speaker summarizes the main ideas and presents a final admonition. He said:

> Some of you may undoubtedly disagree with some of the recent changes in social patterns and in the law. Well-considered dissent is, of course, an intimate part of the process of society. But I am sure you will agree that the force of law--its capacity to initiate change and its flexibility to accept and mold change--is a major force in society, a force which lawyers are most often called

> upon to shape. From the early days in this country's history, it has been the traditional task of lawyers to mediate between principle and practice, between man's heritage and his hopes--that is the message of Law and the Quest for Equality--and that task and message we must never forget.[140]

It appears that Marshall organized this message with his purpose in mind. Further, the speaker arranged his arguments in a manner that probably contributed significantly to the listener's ability to understand the message. It can be concluded that Marshall's organization fulfilled traditional requirements of rhetoric.

In summary, it is evident that Marshall organized these speeches in patterns which combine both inductive and deductive processes. Further, his lines of argument can be easily converted into syllogisms. He demonstrates a preference for such deductive tools as explanation and restatement. He also utilized comparison and causal inference. Among the conclusions which can be drawm from close examination of Marshall's support, the first is that he was determined to convince his listeners that equality and justice under law for all Americans is a realistic goal; the second is that lawyers must assume the largest responsibility for guaranteeing equality and justice for all.

Logical Appeals

This section will examine Marshall's reasoning and evidence in his lecture before law students and lawyers in

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[140]U.S. Department of Justice, "Law and the Quest for Equality," p. 7.

St. Louis, Missouri. To analyze his reasoning, three hypothetical syllogisms can be constructed:

(Major Premise)	If Supreme Court decisions for decades largely legitimized inequality, some Americans, particularly Negroes, did not enjoy equality and justice under law.
(Minor Premise)	Supreme Court decisions for decades largely legitimized inequality.
(Conclusion)	Some Americans, particularly Negroes, did not enjoy equality and justice under law.
(Major Premise)	If litigation and Supreme Court decisions during recent decades changed some racially discriminatory laws and practices, segregation and discrimination in some areas have been diminished.
(Minor Premise)	Litigation and Supreme Court decisions during recent decades changed some racially discriminatory laws and practices.
(Conclusion)	Segregation and discrimination in some areas have been diminished.
(Major Premise)	If equality and justice under law must be achieved, lawyers must assume responsibility for social reform and the quality of legal services for the poor, which ensures equality in access to justice.
(Minor Premise)	Equality and justice under law must be achieved.
(Conclusion)	Lawyers must assume responsibility for social reform and the quality of legal services for the poor, which ensures equality in access to justice.

In each of the above hypothetical syllogisms, the minor premise affirms the antecedent and the conclusion

affirms the consequent. Accordingly, the syllogistic reasoning can be considered valid.

Now, we analyze the forms of support. This section will deal with the nature of the evidence Marshall presented and the effectiveness of that evidence.

Typically, when addressing lawyers and law students, Marshall cites legal cases and explains circumstances to support his contentions. This practice is apparent in the speaker's address at Washington University. For example, offering proof that for decades Supreme Court decisions largely legitimized inequality, Marshall refers to three specific cases. He remarks that in the Dred Scott case (1857) the Supreme Court ruled that Scott could not be a "citizen" of a state within Article III of the Constitution and that he was not free by having lived in free territory because Congress did not have power to deprive slaveowners of "property" rights by prohibiting slavery in certain territory. He added in the Civil Rights Cases (1883), the Supreme Court struck down some provisions of the Civil War Amendments which "tolled the death-knell" for civil rights legislation but by this time "the act had already fallen into desuetude." In Plessy v. Ferguson (1896) the Supreme Court upheld a state statute prescribing the racial segregation of railroad passengers within the state, reasoning that establishing "separate but equal" facilities did not violate the Fourteenth Amendment. The speaker documents thoroughly the impact of Plessy quoting

from L. Pollak's The Constitution and the Supreme Court, C. Vann Woodward's The Strange Career of Jim Crow, brief for the United States as Amicus Curiae . . . Griffin v. Maryland (1963) and Justice Harlan's dissent in Plessy, and finally asserts: "But Plessy marks the nadir of constitutional protection for minorities."[141]

To support his second contention about the quest for equality through the courts, Marshall refers to the Strauder case (1880) which in effect held unconstitutional a state statute prescribing that only white males could serve on juries and Yick Wo v. Hopkins (1886) which condemned administrative discrimination against Chinese as a class. To prove that in the twentieth century the quest for equality has proceeded largely through the courts with some victories and some defeats, Marshall cites practically every legal case and court decision. He also mentions legislative acts and executive orders. Arguing inductively, perhaps, the speaker assumed that if he built a preponderance of instances his conclusions would be inevitable. This method of argument is familiar to lawyers and law students. The speaker's success as a trial lawyer certainly verifies his skill with this and other methods of argument. His evidence probably led his listeners to share his conclusion.

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[141]Thurgood Marshall, "Law and the Quest for Equality," Washington University Law Quarterly, 1:1-3, 1967.

Having offered proof that the Negro who was once enslaved by law and emancipated by law is achieving equality through it, he adds that "law is often in response to social change; but Brown v. Board of Education demonstrates law also can change social patterns. Provided it is adequately enforced, law can change things for the better. . . ."[142]

To prove his final contention again Marshall argues from circumstantial detail, he employs rhetorical questions and he adds his authoritative opinion. The following passage illustrates his method of argument.

> The lawyer has often been seen by minorities, including the poor, as part of the oppressors in society. Landlords, loan sharks, businessmen specializing in shady installment credit schemes--all are represented by counsel on a fairly permanent basis. But who represents and speaks for tenants, borrowers, and consumers? Many special interest groups have permanent associations with retained counsel who seek and sponsor advantageous legislation. But who represents and speaks for the substantial segment of the populace that such legislation might disadvantage? Outside of the political processes, I think the answer is clear. Lawyers have a duty in addition to that of representing their clients; they have a duty to be social reformers in however small a way.
>
> The cases I have mentioned show what can be done by private lawyers through the courts. And the possibilities of social change and reform today are even greater. The lawyer's image as solely the protector of vested interests is changing.
>
> For years the bar responded to the need for legal services for the poor through legal aid, but even the most ardent supporters of the legal aid movement never claimed that the needs of the poor were fully met. Now we have at hand the tools with

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[142]Thurgood Marshall, "Law and the Quest for Equality," p. 8.

> which to provide those services in an organized and more complete way. . . . Like any reform scheme . . . the success . . . is directly related to the quality of people, especially the lawyers, who become active in it. . . . It involves the quest for equality, no longer racial, but rather equality in access to justice.[143]

The specific instances were probably considered sufficient, typical, and reliable. The sources of historical data and testimony were identified. The testimony came from authority that was experienced in the field, known to the audience, and well qualified to discuss it. In all probability, the evidence proved the points and won the audience's acceptance.

Emotional Appeals

In this lecture some emotional appeals are evident also. It should be remembered that without distorting or vitiating the integrity of his ideas, practical wisdom often decrees that speakers expound their views with forethought of the emotional makeup of the audience. Specifically, Marshall made emotional appeals to 1) constitutional and egalitarian ideals; 2) professional pride and social responsibility; and 3) justice and fair play.

Marshall's appeal to constitutional and egalitarian ideals can be illustrated. Having presented an historical narrative of practically all noteworthy cases involving the quest for equality through the courts, Marshall said:

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[143]Thurgood Marshall, "Law and the Quest for Equality," pp. 8-9.

> Moreover, these cases do not appear in Shepard's Citations with an asterisk to limit their precedential value to race relations. They concern us as lawyers, lay professors, citizens, and government officials because the principles they announce quite transcend the immediate controversy which occasioned them. Thus, Powell v. Alabama, the first Scottsboro case, gave rise to an important principle in the administration of justice announced finally in Gideon v. Wainwright; the due process right to a fair trial includes representation by counsel and the appointment thereof for the defendant who cannot afford to retain counsel. The same is true, of course, of the early coerced confession cases; they too have spawned many offspring. In short, these decisions go far to prove the truth of Dean Pound's statement that what he called "justice according to law" . . . insures that the more valuable interests, social and individual, will not be sacrificed to immediate interests which are more obvious and pressing but of less real weight.[144]

Another example illustrates the speaker's practice; it also seems to appeal to the sense of justice and fair play;

> Gratified by the ad hoc victories but dissatisfied in its quest for equality, the organization [NAACP] decided that it would press on every possible front for the elimination of inequality and discrimination. The means selected was through use of the courts, partially because other avenues of redress appeared to be closed, and partially because of the deep and abiding faith the planners had in the rule of law, and the efficacy and feasibility of instigating social reform through reliance upon the Constitution--which after all was designed to insure the protection of the basic values of our society.[145]

Marshall's speeches also included appeals to social responsibility. For example, he says that the quest for

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[144]Thurgood Marshall, "Law and the Quest for Equality," p. 8.

[145]Thurgood Marshall, "Law and the Quest for Equality," pp. 3-4.

equality is an ongoing search, "as our ideas and hopes are transmitted into reality." He added remarks made by President Lyndon Johnson: "For the work that lies ahead is demanding, and involves far too many lives in urgent need of help, to be parceled out by race. Tomorrow's problems . . . will not be divided into "Negro problems" and "white problems." There will be only human problems and more than enough to go around."[146]

Of particular importance is the fact that in Marshall's addresses to law students and members of the legal profession he repeated the following appeal to the listeners' professional pride and social responsibility. In this connection, Marshall said:

> I am sure all agree that the force of law--its capacity to initiate change and its flexibility to accept and mold change--is a major force in society, a force which lawyers are most often called upon to shape. From the early days in this country's history, it has been the traditional task of lawyers to mediate between principle and practice, between man's heritage and his hopes--that is the message of the Law and the Quest for Equality--and that task and message we must never forget.[147]

Orators frequently furnish their listeners with pathetic proof. Pathetic proof employed as adjuncts to, not substitutes for, reason can be considered appropriate.

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[146]Thurgood Marshall, "Law and the Quest for Equality," p. 5.

[147]Thurgood Marshall, "Law and the Quest for Equality," p. 7.

Indeed pathetic proof is often essential to induce belief and to produce action. It is suitable to assume that the preceding examples of Marshall's pathetic proof meet these requirements.

CHAPTER VI

STYLE AND DELIVERY

Analysis of oratory must give some attention to the speaker's style and delivery. This chapter examines Marshall's style and delivery with particular emphasis on the five speech situations treated in this study.

Style

Classical rhetoricians refer to style as elocutio. As a part of rhetoric, elocutio refers largely to the way in which the speaker clothed his ideas with language.[1] Thonssen, Baird, and Braden establish the essential components of style as follows: "An effective style--that is, one capable of preparing and opening the minds of the listeners for a particular subject--depends upon a speaker's having (1) an idea worth presenting, (2) an unmistakably clear conception of the idea, (3) a desire to communicate it, (4) a willingness to adapt it to a particular set of circumstances, and (5) a mastery of language adequate to express the idea in words."[2] Further, authorities in the field of

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[1]Lester Thonssen, A. Craig Baird, and Waldo W. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), p. 489.

[2]Thonssen, Baird, and Braden, p. 515.

public address and rhetoric summarize the chief means of enhancing style as communication: "There are two sets of materials which are more likely to open the listeners' minds to the ideas of the speaker: (1) elements that make for clearness, and (2) elements that make for impressiveness in discourse."[3]

This section deals with the elements of clarity, correctness, vividness, and appropriateness which reveal significant features of the speaker's style.

Marshall probably enhanced the clarify of his speeches when he employed specific historical facts and figures. This stylistic endeavor was impressive when he traced the history of the struggle for equality in America from the seventeenth century to the mid-twentieth century.

Marshall's thorough knowledge or familiarity with the content of his messages apparently promoted the clarity of his speeches. The first black Solicitor General of the United States, who was chief NAACP lawyer for more than twenty years and a federal judge for four years, spoke about matters related to his personal and professional experiences.

Of particular importance is Marshall's perceptive word selection and types of examples. His words before

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[3]Lester Thonssen and A. Craig Baird, Speech Criticism: The Development of Standards for Rhetorical Appraisal (New York: Ronald Press Company, 1948), p. 430.

general audiences were distinctively different from words selected for audiences made up of lawyers and law students. Addressing the latter, Marshall's vocabulary reflected his exceptional legal mind. For example, in these speeches he discusses the Court's posture interpreting, or reinterpreting, that guarantee of the First Amendment protecting the right to criticize the status quo. Also, Marshall asserts: "Through its power of invalidation, the Supreme Court has wrought fundamental change in the structure of our society."[4] Further, Marshall explains the contrast between this use of the power of invalidation and that which confronted the early welfare and New Deal legislation. Marshall also contends that "Powell v. Alabama (287 U.S. 45) . . . and Brown v. Mississippi (297 U.S. 278 (1936)--these two decisions heralded a new Supreme Court supervision radically reforming the State criminal processes. . . ." Explaining that courts had traditionally initiated and effectuated judicial reform of the judicial process, Marshall remarks: "For example, those protesting against the imposition of the new exclusionary rules often overlook the hearsay rule, a massive judge-created exclusionary rule designed to protect less worthy interest than constitutional rights."[5] Commenting on the unique facet of this reform

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[4]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

[5]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5981.

and the constitutional principle upon which these decisions are based, Marshall refers to the "doctrine of stare decisis" and the "Due Process Clause." Marshall's selection of words and use of examples can be illustrated in the following passage:

> Even though, as a national proposition, we have moved a long way from those initial outrages perceived in Brown v. Mississippi and Powell v. Alabama, gross imperfections still remain, if the standard of judgment is contemporary communal values. Pre-arraignment procedures in the station house; bail; pretrial publicity; the right to a speedy trial; pretrial discovery; the admission of evidence dealing with the accused's prior criminal record; the right to counsel in specialized proceedings, such as collateral attacks, commitment proceedings, and revocation-of-parole proceedings. These are just some of the areas that will come under particular scrutiny in the years to come, and the areas in which radical reform will take place.[6]

Perhaps it should be added that Marshall used phrases such as follows: "as a national proposition,"[7] "as a general proposition,"[8] and "as a logical proposition."[9] For example, speaking of the necessity to reform the criminal process, Marshall remarks:

> While, hopefully, only a minority of the population would come in contact with law enforcers, this enterprise could hardly be considered specialized: as a logical proposition all citizenry was

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[6]U.S., Congressional Record, 90th Cong., 1st Sess. (1965), CXIII, No. 140, 24644.

[7]Ibid.

[8]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

[9]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

> susceptible to the abuses, for it was impossible to insure against being included in the minority, and the enforcement of criminal laws is one of the most direct or immediate confrontations between the individual and the state.[10]

Marshall's speeches to general audiences contained little legal terminology which is replete in his speeches to lawyers and law students. On the other hand, it appears that Marshall used words that are familiar when addressing general audiences. His words seemed to convey their intended meaning as accurately as possible.

It has been mentioned that Marshall frequently used long sentences. According to Jamye Williams, "He uses a large number of long, loose sentences. His transitions, nevertheless, are especially clear and well defined."[11] On the other hand, it should be added that the speaker's transitions contribute to the coherence of the message. Often, Marshall's assertions are cumulative. For example, at the Indianapolis Housing Conference he said: "There are some people, and we should never forget or ignore it, who would say 'Yes, that can be suitable living environment.' And then there are some who really haven't thought about it because, they believe, it doesn't affect them. Finally, there are those who know, without doubt or reservation, that

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[10] Ibid.

[11] Jamye Coleman Williams, "A Rhetorical Analysis of Thurgood Marshall's Arguments Before the Supreme Court in the Public School Segregation Controversy" (PhD dissertation, Ohio State University, 1959), p. 199.

such an environment is suitable neither for the individual nor for the community." In the same speech we find further evidence of Marshall's transitions:

> Surely then, this . . . separation of one group, one race, from another [must be] repaired. . . .
> To do that requires. . . .
> And to do that, we must. . . .
> First of these. . . .
> And with these factors established. . . .
> If we are to succeed in this effort. . . .[12]

Discussing Marshall's sentence structure in Brown v. Board of Education, Jamye C. Williams notes:

> His sentences which, when transcribed, appear long and involved obviously were effective when delivered. . . . An examination of Marshall's sentences revealed that some of them are extremely short, being merely answers to the interrogations of the judges; others are inordinately long, following the pattern of conversation. That the sentences, short and long, satisfy the criterion of clearness is evidenced by the Justices' indication that they comprehend his argument. Mr. Marshall's answers to the interrogations, with his now simple, now diffuse style, show the meeting and the understanding of legal minds.[13]

Making an "overall evaluation" of Marshall's style, Williams concludes: "It is, according to Aristotelian standards, both clear and appropriate. Clearness was secured through diction, the collocation of words, and the embellishment. Marshall's suiting of his language--its proportion and emotion--to the occasion also contributed to his effectiveness."[14]

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[12]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

[13]Williams, pp. 179-180 [14]Williams, p. 183.

Marshall frequently used specific instances to support general statements. For example, he said:

> It was the Northern states that did much to deny free Negroes their rights after the Civil War. . . . A mob drove eight Negroes out of Portsmouth, Ohio. . . . Bands of whites in Cincinnati took the law in their own hands and ran out of the city those Negroes who did not have the bonds required by law. In New York state, there were riots in Utica, Palmyra, and New York City. . . . In 1834, a mob of whites marched down into the Negro section of Philadelphia and committed numerous acts of violence. They wrecked the African Presbyterian Church, burned homes, and . . . beat up several Negroes.[15]

Often Marshall tried to clarify abstract concepts by including parenthetical expressions: "The force of law--its capacity to initiate change and its flexibility to accept and mold change--is a major force in society."[16] Parenthetical remarks frequently provided the audience additional information as follows: "Two years later--again at the urging of the Solicitor General, who took issue with I.C.C.--the Supreme Court outlawed segregation in railroad dining cars."[17]

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[15]"Address of Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights" (Washington: Government Printing Office, 1966), p. 43.

[16]Thurgood Marshall, "Law and the Quest for Equality," Washington University Law Quarterly, 1:9, Winter, 1967.

[17]"Address of Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights," p. 51.

Marshall's speeches contained accurate grammar and acceptable sentence structure with only a few exceptions. Each speech included a suitable mixture of simple, compound, complex, and compound-complex sentences which added variety. Lengthy sentences were followed by short sentences. The shortest sentence contained only three words, while the longest sentence contained eighty-eight words. Each speech revealed a predominance of complex sentences, illustrated in the following paragraph:

> If we are to fulfill these rights, if we are promptly and effectively to bridge the gap between theory and practice, we must first realize fully the depth of the problem of racial prejudice and discrimination in this country. There are today two groups of Americans sincerely interested in the problems. One group believes we have made tremendous progress in the last two decades and thinks little more is needed--that, given time, the problem will solve itself. The other group recognizes the progress that has been made, yet views the present achievement as no more than a firm base from which to launch the final attack on the causes of racial and religious prejudice. Both groups need to pause for a consideration of the background history of this problem.[18]

The speaker incorporated figurative language which enhanced the vividness and the forcefulness of his ideas. For example, he said: "Perhaps there were some who philosophized that since things could not get worse, they would get better. But they were wrong. This was a dark

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[18]"Address of Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights," p. 39.

hour indeed; yet a blacker night would come, and the sun would not come out for a very long time."[19]

Marshall frequently employed questions that probably helped direct the listeners' attention to a specific phase of his subject. In each case the question was followed by a clear and concise answer. This stylistic device contributed to the overall vividness of each speech. Within a single paragraph, he posed three questions: "Of what relevance is all of this to my second theme: the role of lawyers in society? . . . Landlords, loan sharks, businessmen specializing in shady installment schemes--all are represented by counsel. . . . But who represents and speaks for tenants, borrowers, and consumers? . . . But who represents and speaks for the substantial segment of the populace that such legislation might disadvantage? . . . I think the answer is clear. Lawyers have a duty. . . . They have a duty to represent the public, to be social reformers. . . ."[20]

Other examples of figurative language characterized Marshall's speeches. He often employed terms such as: "struck down;" "the darkest days;" "outlawed;" "dead letter;" and "kindled a flame." Vivid expressions were

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[19]"Address of Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights," p. 47.

[20]Marshall, "Law and the Quest for Equality," Washington University Law Quarterly, pp. 8-9.

included: "These decisions were a long time bearing fruit;" "disfranchising laws . . . separating races from cradle to grave;" "massive resistance;" "The New Deal [did not] bring dramatic relief;" "The Negro could not . . . appreciate . . . being dealt a new hand;" "Again, he seemed . . . left out of the deal;"[21] "The Supreme Court served, at least in 1954, . . . as a voice of communal conscience;"[22] and "two worlds were being set up within the same democracy."[23]

Another significant aspect of Marshall's style was his appropriate use of a quotation to stress an important point. To emphasize the importance of the Brown decision, the speaker remarked to general audiences that one author called the day of that decision "That Great Gettin' Up Morning."[24] Marshall quoted excerpt from this spiritual:

> There's a better day a' comin'
> Fare thee well, fare thee well,
> In that great gettin' up morning
> Fare thee well, fare thee well.[25]

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[21]"Address by Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights," pp. 44-51.

[22]Thurgood Marshall, "The Constitution and Social Change," Federal Bar News, September, 1965, p. 287.

[23]U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24632.

[24]Marshall, "Law and the Quest for Equality," Washington University Law Quarterly, p. 6.

[25]Ibid.

Addressing audience of lawyers and law students, Marshall occasionally quoted Supreme Court Justices. He quoted President Lyndon Johnson in his speech to the Federal Bar Association. Marshall concluded by quoting Thomas Jefferson.

In his Chicago speech, Marshall also employs personification. Commenting on Supreme Court decisions which marked a new era in First Amendment doctrine, Marshall observes: "The first amendment's protective cloak was spread wide enough to safeguard the right to criticize from suppressive actions of the states."[26] In this speech, one finds additional examples of Marshall's capacity to employ imagery and vivid language. For instance, Marshall described the effect of recent Supreme Court decisions: "What crumbled was not merely a network of legal rules; it was a whole social system bent on keeping the Negroes in a position of inferiority, a social system which relied on and was inspired by the Jim Crow laws. Segregation was constitutionally condemned, and it was thus stripped of all moral predicates."[27] Further, addressing the Federal Bar Association, Marshall contends: "One of the most distinguished features of American society is that it began with a bang, not a whimper--with a revolution packed with

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[26]U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5980.

[27]Ibid.

economic, social, and political significance."[28] Discussing practices of deliberate racial discrimination in America prior to the 1930s, Marshall says: "Whether by action of the states or inaction by the federal government, they both recognized two classes of citizens divided by color--two worlds within one."[29] Marshall's first speech as Solicitor General of the United States before the Annual Convention of the Federal Bar Association contains an illustration of the speaker's ability to utilize the simile. For example, Marshall begins his address on "The Constitution and Social Change" as follows: "The recent history of the Supreme Court is, in one respect, like a contemporary abstract painting."[30] In this same speech, Marshall remarks that the Supreme Court's efforts to ensure equality and justice, specifically in terms of reforming criminal processes, have been evident for about thirty years but most recent decisions indicate that the Court's involvement has greater intensity. Figuratively, Marshall adds: "The brush strokes have been getting broader and broader, and the result has been, in my opinion, to prove anachronisms which have no place in our society."[31]

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[28] Ibid., A5979.

[29] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

[30] U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5979.

[31] U.S., Congressional Record, 89th Cong., 1st Sess. (1965), CXI, No. 198, A5978).

Marshall seems to have a penchant for parallelism. Evidence of this particular aspect of his style can be found in speeches to lay and legal audiences. For example, speaking to the Indianapolis Housing Conference, Marshall observes the scope of inadequate housing: "It is not a problem just of the poor. . . . It is not a problem just of the Negro. . . . It is not a problem of a particular religious or nationality group. . . ." Commenting on the "varying and divergent assessments about housing--its adequacy, its ready accessibility by all, its character and quality," Marshall repeats "there are those. . . ." Each speech contained evidence of interrogation which seems to be a favorite construction. In his Indianapolis address he said: "Let us assume that all housing in our urban areas met the standard of decency [guaranteed in the Housing Act of 1949]." Then he queried: "Would we then have satisfied our goals, even though some--a very sizeable some--would be restricted to certain areas by deliberate design, confined to a section not by choice but by influence beyond their own desire and will, prohibited, as if by law of apartheid, from the exercise of freedom of mobility, which is a right enjoyed and utilized by others with varying degrees of flexibility?"[32] Presumably, these devices helped him to maintain interest and to promote clarity. Probably, the most

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[32]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

impressive effect of this device was its appropriateness to the speaker, the audience, the subject, and the occasion.

In his speeches to legal audiences, some of the cases cited included: "Dred Scott case;" "Civil Rights Cases" of 1883; "Plessy v. Ferguson;" Strauder case;" Yick v. Hopkins;" "Guinn v. United States;" "School Segregation Cases;" "Brown v. Mississippi;" "Scottsboro cases;" "Powell v. Alabama;" and "Gideon v. Wainwright."[33] On the other hand, Marshall's speeches to general audiences did not include these citations. Addressing general audiences or listeners who are law students and/or members of the legal profession, Marshall seems to impart knowledge, judgment, or counsel for the benefit of his hearers and to present material within their comprehension, phrased in language they could understand.[34]

Each speech appears stylistically similar in that specific features of clarity, correctness, vividness, and appropriateness were evident. Marshall's oral style seems to have been well-suited to the speaker, his purpose, his message, his audience, and the occasion. He used language that was consistent with his education, status, profession, and the listeners' expectations. One might conclude that

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[33]Marshall, "Law and the Quest for Equality," Washington University Law Quarterly, pp. 2-8.

[34]Bower Aly and Lucile Folse Aly, A Rhetoric of Public Speaking (New York: McGraw-Hill Book Company, 1973), p. 110.

these elements of style met the requirements of effective oral style and contributed significantly to the listeners' understanding and overall impact of each message.

Delivery

This section examines significant aspects of Marshall's delivery that enhanced his communicativeness. His method of presentation, appearance, bodily action, and vocal characteristics are considered.

Newspaper articles about the five speeches of this study contained no specific references to Marshall's delivery. However, information about his activities as legal defense counsel for the NAACP, comments by persons who observed him in other speech situations during the fifties and sixties, and the texts of five selected speeches provide important information.

A colleague remarked that Marshall's cases and speeches were prepared with habitual thoroughness.[35] Substantial evidence supports the fact that Marshall believed in being well-prepared when he argued a case or delivered a speech. These factors probably enhanced his effectiveness.

As legal counsel for the NAACP, Marshall frequently addressed local chapters and other groups around the country. Most of his speeches dealt with the struggle for

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[35]Interview with Louis Berry, former NAACP lawyer, Alexandria, Louisiana, September 21, 1978.

equality and justice. Marshall was acclaimed as a brilliant and successful lawyer who devoted most of his career to the legal struggle for civil rights.[36] Thoroughly familiar with his subject, Marshall did not need to rely heavily upon notes or manuscript.

Reliable sources provide additional evidence that Marshall delivered his speeches without a manuscript. Columnists testified at confirmation hearings when Marshall was nominated to be Solicitor General of the United States that Marshall did not use a manuscript. While addressing local chapters of the NAACP in several states, Marshall's secretary reports that he usually spoke from notes.[37]

The texts of Marshall's speeches provide clues about his delivery. The White House Conference text suggests that he probably utilized a manuscript for part of his historical review "of the struggle for racial equality in this country,"[38] which covered three centuries. Marshall acknowledged his indebtedness to the well-known historian John Hope Franklin for materials "up to 1900"[39] as mentioned

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[36]U.S., Congress, Senate, Subcommittee of the Committee on the Judiciary, Nomination of Thurgood Marshall to Be Solicitor General of the United States, Hearing, 89th Congress, 1st Sess., July 29, 1965 (Washington: Government Printing Office, 1965), pp. 8-9.

[37]Telephone conversation with Alice Stovall, Secretary to Thurgood Marshall, NAACP Director-Counsel, November 5, 1977.

[38]"Address by Solicitor General Thurgood Marshall," Major Addresses at the White House Conference "To Fulfill These Rights," p. 39.

[39]Ibid.

earlier in this study. The speaker's message to each audience, lay or professional, contained ideas and issues he addressed often. It seems safe to assume that Marshall's experiences and knowledge prepared him to deliver most of each speech extemporaneously.

Several aspects of Marshall's appearance were significant. His distinguished and commanding presence impressed audiences. In June of 1967, a Washington reporter described Marshall as "an immensely attractive fellow and charming."[40] Photographs of Marshall taken during the sixties reveal that he was tall, well-groomed, and handsome. Sidney Zion, New York Times columnist, noted: "The six-foot-two jurist insists that his weight has remained steady during the past five years--between two hundred and two hundred ten. While not exactly fat, Marshall is comfortably thick."[41] The National Review noted that "he is affable, outgoing, an highly attractive human being."[42] One senator remarked that Marshall had an "almost occult power over the

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[40]U.S., Congress, Senate, Committee on the Judiciary, Nomination of Thurgood Marshall, Executive Report No. 13, 90th Congress, 1st Sess., August 21, 1967 (Washington: Government Printing Office, 1967), p. 45.

[41]Sidney E. Zion, "Thurgood Marshall Takes a New 'Tush-Tush' Job," The New York Times Magazine, August 22, 1965, p. 69.

[42]James T. Kilpatrick, "Term's End," National Review, July 25, 1967, p. 804.

Supreme Court."[43] Marshall's appearance and personality probably contributed to the overall effectiveness of his delivery. Rhetoricians agree that these factors often "figure prominently in the judgments of men."[44]

Marshall's legal training and his public speaking experiences seem to have equipped him to use appropriate bodily action to reinforce his message. Eric sevareid, observing Marshall on several occasions in 1960, reported that Marshall's greatness was manifested "in every expression and gesture."[45] Members of Louisiana audiences remarked that he maintained good eye contact and used a variety of gestures to emphasize his ideas. They noted that he moved from one side of the lectern to the other side as he talked. Occasionally, he clasped his hands behind his back as he walked. Sometimes, introducing a quotation or a list of facts, he removed note cards from his pocket.[46] This device is commonly used by speakers to heighten the importance and the accuracy of the material cited. Lerone Bennett, Jr., Johnson Publishing Company editor, observed Marshall numerous times when Marshall addressed NAACP

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[43]Randall Bland, Private Pressure on Public Law (Port Washington, New York: Kennikat Press, 1973), p. 116.

[44]Thonssen, Baird, and Braden, p. 525.

[45]Bland, p. 117.

[46]Interview with Mrs. J. K. Haynes, Baton Rouge, Louisiana, October 25, 1977.

chapters around the country. Bennett noted: "He dramatized litigation, made it understandable and gave Negroes a new vision of battle. Because of him, the Fourteenth Amendment became as real and meaningful to Lennox Avenue as the cop on the beat. . . . The man . . . made the Supreme Court comprehensible to Lennox Avenue, and Lennox Avenue comprehensible to the Supreme Court."[47] Similarly, Jamye C. Williams, who was a member of the audiences when Marshall delivered a speech at Central State College and a speech in Miami, Florida, in 1956[48] wrote the following comment on the speaker's bodily activity:

> As to his bodily action, one observes, first of all, his excellent eye contact. He is both physically and mentally direct. While he does not gesticulate unduly, he makes one aware of his expressive hand movements. The manner in which Marshall walks to the platform . . . shows that he is poised, self-confident, and in control of his physical machinery. His facial expressions connote clearly the mood and the emotion of his words. On the whole . . . Thurgood Marshall's delivery is characterized by coordinated use of the voice and the body.[49]

Numerous news articles acknowledge Marshall's exceptional vocal skills. The National Review noted that in court he was articulate.[50] Eric Sevareid observed that

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[47]Lerone Bennett, Jr., Before the Mayflower: A History of the Negro in America 1619-1966 (Chicago: Johnson Publishing Company, 1966), p. 310.

[48]Williams, p. 208.

[49]Williams, p. 186.

[50]Kilpatrick, p. 804.

Marshall was impressive "in everything he said."[51] Time Magazine disclosed that he argued law "in meticulously scholarly tones" and that he was "equally comfortable drawling Negro dialect."[52] Significantly, his St. Louis lecture included one quotation with Negro dialect. In many speech situations, listeners observed that Marshall varied his pitch, rate, volume, and quality to suit the message, the audience, the speaker, and the occasion. Marshall's clear and distinct articulation probably fulfilled the audience's expectations. His education and professional experiences very likely contributed to his correct pronunciation. Listeners report that he used distinct articulation and correct pronunciation when he addressed Texas college students and Louisiana educators.[53] Among others, United States Congressman Andrew Jacobs describes Marshall's speech in Indianapolis as "eloquent."[54]

Having observed Marshall's delivery of speeches at Central State College, April 14, 1956, and at the A.M.E. General Conference, Miami, Florida, May, 1956, Jamye C.

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[51]Bland, p. 117.

[52]"The Supreme Court: Negro Justice," Time, June 23, 1967, p. 18.

[53]Interview with Dr. J. K. Haynes, former Executive Secretary of the Louisiana Education Association, October, 1976.

[54]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 101, A3319.

Williams makes the following comment about the speaker's vocal skills:

> His voice is deep and resonant, there being no irritating qualities to distract the listeners. The resonance of Mr. Marshall's voice results in appropriate volume for the occasion, the room, and the speech itself. Not only is the volume adequate, but also is his speech distinct. One notices too that Marshall's voice possesses emotional color which reveals him as now earnest and impassioned, now ironic and indignant. His genuine feelings seem to permeate his voice to such an extent that a responsive chord is struck with the audience. The tempo of his speech is usually slow and deliberate. One may note particularly the restrained way in which he is able to handle emotionally loaded material. Mr. Marshall's use of variations in force aids him in effectively communicating his ideas.[55]

Marshall apparently possessed the knowledge and the ability to use a variety of vocal techniques appropriately. His vocal skills probably enhanced his effectiveness in the speech situation.

Substantial evidence supports the fact that delivering addresses to general audiences and to audiences consisting of lawyers and law students Marshall fulfilled the traditional standards of rhetorical effectiveness. In each speech situation, Marshall probably gained and maintained the attention of his audience. Marshall's theme was clearly established and his main points were valid and supported with an abundance of evidence. As pointed out earlier, his method of delivery was chiefly extemporaneous and his vocal skills were varied and appropriate. The

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[55]Williams, pp. 185-186.

structure of each speech met the technical requirements of rhetoric as noted earlier in this study.

Although it is impossible to estimate the exact number of listeners persuaded by Marshall's message, it is safe to assume that Marshall communicated his ideas effectively. It has been reported that before the Federal Bar Association Marshall "delivered a stimulating interpretation of recent Supreme Court decisions."[56] As a speaker, Marshall apparently demonstrated that he possessed vision and the capacity to understand the meaning of current happenings. Also, he possessed integrity and revealed the social utility of his message in each speech situation. In part, a speaker's greatness is measured in terms of his ability to foresee the effects of a contemporary action upon the destinies of men. Marshall's speeches demonstrated his perception, his competence, and his overall effectiveness as an orator. In fact, it has been noted that few living individuals have had greater effect than Marshall on the social fabric of America.

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[56]J. Thomas Rowland and Joseph Fontana, "Convention Program Reaches New High," Federal Bar News, October, 1965, p. 339.

CHAPTER VII

SUMMARY AND CONCLUSIONS

The purpose of this study has been to examine, analyze, and evaluate five speeches delivered by Thurgood Marshall during his tenure as Solicitor General of the United States 1965-1967.

In appraising Marshall's advocacy of equality and justice for all, it seems desirable to consider two broad but poignant questions: (1) What kind of man was he? and (2) What is the overall effectiveness of his speaking?

Thurgood Marshall's career as Solicitor General was highlighted by his unparalleled number of legal victories before the Supreme Court, earning him the title, "The Court's Tenth Member."[1] Perhaps of greatest significance is the fact that Marshall's speeches outside the courtroom afforded him impetus as a speaker of national prominence.

Throughout most of Thurgood Marshall's career, Americans had little difficulty perceiving his role in the American Negro's struggle to secure equality and justice. His name was synonymous with civil rights. His speeches and press statements reflect his philosophy and commitment to equal justice for all.

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[1]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985.

By the time Marshall became Solicitor General he had won acclaim and respect for his skill as a trial lawyer possessing a "brilliant and forceful mind with few peers in the legal profession,"[2] and his knowledge of and contributions to constitutional law. Marshall was "a man whose work symbolized and spearheaded the struggle of millions of Americans for equality before the law."[3] For example, as Director-Counsel of the NAACP he became synonymous with their legal attacks on inequality and injustice in America. Perhaps, it should be added that Marshall attributes "his passion for argument and his ability at it to his father." It has been frequently reported that Marshall was born into "a naturally argumentative family, in fact, and one used to fighting for its rights."[4] As a law student at Howard University, he accepted the challenge to become a "social engineer." These experiences apparently shaped his overall conduct and philosophy. Obviously, his attitudes and convictions must be considered as determinants in structuring his pattern of life. For instance, his concern for the human element seems to take

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[2] Ibid.

[3] U.S., Congress, Senate, Subcommittee on the Judiciary, Nomination of Thurgood Marshall to Associate Justice of the Supreme Court of the United States, Hearing, 90th Congress, 1st Sess., July 13, 14, 18, 19, and 24, 1967 (Washington: Government Printing Office, 1967), p. 2.

[4] U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985.

precedence over statistics, reason outweighs formality, and intelligence supersedes blind technicality. Further, he believed "that human rights must be satisfied through the orderly process of law."[5]

An analysis of his effectiveness is appropriate and essential to complete the concept of the man. Six measures of effectiveness have been recommended by Thonssen, Baird and Braden and are applied to the speeches examined in this study. Generally, the standards of effectiveness may be summarized as follows: (1) the test of readability; (2) the technical perfection; (3) the honesty and integrity of the orator and the social utility of his message; (4) the character of the immediate response; (5) the orator's wisdom to judge trends of the future; and (6) substantial responses producing the desired changes in belief or attitude, which may come hours, days or weeks after the delivery of the speech and the long-range effects of oratory upon society.[6]

According to some authorities in the field of speech readability of speech is sometimes perceived as a negative indication of effectiveness on the assumption that a speech must have been unsatisfactory to the listeners if it reads well in print. Since numerous exceptions to

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[5]"With Mr. Marshall on the Supreme Court," U.S. News and World Report, June 26, 1967, p. 12.

[6]Lester Thonssen, A. Craig Baird, and Waldo W. Braden, Speech Criticism (2d ed.; New York: Ronald Press Company, 1970), pp. 540-545.

this criterion have emerged, the validity of this position seems doubtful. Applying this criterion to copies of Marshall's speeches, one can detect what some have described as Marshall's "appeal to common sense and logic rather than to legal technicalities."[7] Marshall's speeches are notable for the quality of their prose and in this writer's opinion read well. It could be concluded that this aspect verifies the fact that Marshall's style almost equaled his ideas in determining his overall effectiveness as a speaker.

The technical or artistic excellence of a speech is accepted as a measure of merit. Marshall's addresses to legal scholars and laymen are praiseworthy in terms of inventive conception, structure and stylistic composition. Marshall's speech organization consistently conformed to the classical divisions of introduction, body and conclusion. The structural aspects of his speeches were adapted in content and length to the knowledge and interests of the audiences. In terms of style, Marshall's speeches were lucid, stimulating, impressive, and appropriate. He utilized familiar terms, figures of speech and thought which suited the particular audience. Marshall tends to prefer the logical pattern of organization whether addressing a general audience or law students and lawyers. The

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[7]U.S., Congressional Record, 89th Cong., 2d Sess. (1966), CXII, No. 32, A985.

speeches treated in this study indicate that he often utilizes the problem-solution pattern effectively. Of some importance is the fact that Marshall varies his types of examples to suit the needs of each type of audience. Marshall's contentions were supported by sound reasoning.

Marshall's legal training contributed to his effective inventive skill. His ability to think clearly and to reason cogently was demonstrated on each speech occasion. This capacity combined with his exceptional talent for choosing effective and appropriate arguments and supporting them logically strengthened his oratory. Marshall demonstrates the ability to establish the acceptability of a conclusion with the aim of securing belief or action.

Marshall's arguments usually centered on social and moral forces. These arguments required proofs demonstrating the existence of universal tendencies. Marshall fulfilled this requirement by presenting a body of data, incidents, and statements correlated and synthesized so that his conclusions about their importance seem unquestionable. Further, Marshall sought to arouse listeners and to urge the correction of immediate and pressing wrongs.

Marshall's address at the White House Conference represents a typical example of his preference for narration of historical and contemporary events as a method

of development. His proposition rested chiefly upon historical narratives and examples. In this address, Marshall devoted most of the speech to narration and development of historical and contemporary incidents, analogies, and examples which inform the audience about the persistent denial of equality and justice to American Negroes. Members of the audience obviously found listening easier and ideas understandable because of the speaker's mode of development. Among others, Genung has described the rhetorical advantages of this method of presentation:

> When we inquire what ordinary men . . . are interested in and talk about, we find it is almost to be some manifestation of action. . . . Such things can be observed without learning and without painful thought; moreover, the very progress of them is a stimulus to sustained attention. The spirited account of such things, accordingly, is the kind of literature that appeals most easily to all classes of men.[8]

Marshall's audiences, for the most part, were favorably disposed toward his premises. Addressing general audiences, in particular, Marshall needed to amplify and vitalize his principles of judgment and conduct. To some extent, he was able to impel his hearers to act upon these principles with vigor and without delay by the proofs which he included to support his urgings, as well as by the manner in which he applied those supports. Evidence of the

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[8]Marie Kathryn Hochmuth, ed., A History and Criticism of American Public Address (New York: Russell and Russell, 1955), pp. 159-160.

latter can be found in the published report following the White House Conference. Following Marshall's speech in Indianapolis, newspaper accounts of statements by public officials and a list of recommendations by the conferees represent, in part, the extent to which Marshall achieved his goal.

It is not surprising that addressing audiences of lawyers and law students Marshall uses mode of development which demonstrates his briefmaking skills. For example, the brief is divided into three parts--introduction, discussion, and conclusion. The introduction includes the background material needed for understanding the discussion to follow; the main points of the discussion correspond to the points of partition in the introduction; the outline is logical, with points supported by reasoning and evidence; refutation is clearly presented; and the conclusion summarizes the main points and affirms the proposition.

Evaluating Marshall's overall effectiveness, the critic also considers his honesty and integrity and the social utility of his message. In this connection, the critic may query: Does the speech reflect high moral intent? Does it express ideas and feelings that are ethically praiseworthy? In short, is a good man using his art to do good things?

As an orator, Marshall did not rely upon his engaging presence and prominent position. His addresses consistently appear to epitomize an active intelligence energetically at work.

During and following the period that Thurgood Marshall served as Solicitor General of the United States and made the five speeches treated in this study, we find substantial evidence that Marshall meets the following requirements: "One who speaks . . . suasive discourse may thus be making--or at least declaring--policy. He propounds a course of action to be taken, often in troubled circumstances, where even the wise and the prudent may hold differing opinions. The rhetorician is concerned typically with concerting and advocating a judgment, with reaching and defending a decision in areas that may be controversial."[9]

Marshall's oratory which essentially focused on themes dealing with equal rights and justice or generally speaking civil rights may be characterized or classified as rhetoric of reform; i.e., he urges his listeners 1) to utilize legal and creative means, 2) to share responsibility for eliminating inequality and injustice, and 3) to mobilize all available resources which promote social reform in keeping with constitutional guarantees.

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[9]Bower Aly and Lucile Tolse Aly, A Rhetoric of Public Speaking (New York: McGraw-Hill Book Company, 1973), p. 2.

Part of Marshall's heritage from his father was his propensity for argumentation and debate which led to his pursuit of a career as a lawyer. As a law student at Howard University we discover that Marshall not only acquired academic skills which enabled him to become a trial lawyer with few peers but helped to mold his faith in the law as the instrument of social change and his concept of members of the legal profession as social engineers.

Marshall joined his former mentor Charles L. Johnson as an NAACP lawyer. Marshall, along with other NAACP lawyers, argued and usually won cases which not only defined the constitutional rights of the Negro as a citizen but broadened the interpretation of constitutional rights for all citizens and extended civil liberties for white citizens as well. These activities and their goals were reported in newspapers throughout this nation. Of the hundreds of comments, the following remarks published in The Crisis may be viewed as among the best:

> While it may be true that laws and constitutions do not right a wrong and overturn established folkways overnight, it is also true that the reaffirmation of these principles of democracy build a body of public opinion in which rights and privileges of citizenship may be enjoyed, and in which the more brazen as well as the more sophisticated attempts at deprivation may be halted.[10]

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[10]Thurgood Marshall, "Equal Justice Under the Law," The Crisis, July, 1939, p. 201.

During the late 1950s and early 1960s numerous studies reveal that a minority of American Negroes had entered a growing affluent black middle class more than in prior decades. On the other hand, many reports substantiate the fact that the condition of the majority of American blacks had not improved significantly. Millions of blacks continued to live in the grinding poverty and the deepening despair of the urban ghettos. There is evidence that the lot of these neglected and alienated people had not been altered. In fact, evidence supports the fact that the gap between the haves and the have-nots was widening.

When signs of an activist civil rights movement emerged, the government took steps to improve the lot of American Negroes. In the first five years of the 1960s, executive orders and legislation passed by Congress represented some attempts. During the Kennedy and Johnson administrations the War on Poverty was accompanied by an economic boom. However, riots in Watts, Detroit, Harlem and other northern cities erupted during the summers of 1965-1967. It seems the civil rights laws had not eradicated the de facto economic and social segregation in the North. The War on Poverty had not fulfilled the goals and the economic prosperity of the 1960s had not reached those in the lower economic strata. For instance, reports show

that the average Negro family's income had decreased during this period in comparison to the average white family's income.[11]

This was a period in America when there existed the need to determine anew. At the same time there emerged demands for political and economic self-determination, the call for "Black Power" and what has been called the Black Revolution. In short, it seems that America was confronted with the most serious and potentially dangerous domestic situation since the Civil War.

Evidence presented earlier substantiates the fact that Thurgood Marshall's honesty and integrity were widely acclaimed time and time again by supporters and opponents as well. Further, these speeches provide additional evidence that Marshall was in close contact with problems related to inequality and injustice, was qualified to speak of the need for social reform and the capacity of the Supreme Court and all other Americans to make equality before the law a reality, and was an authority on constitutional law capable of recommending specific actions to be taken by the audience to accomplish desired goals.

Regarding the immediate response given to a speech, it has been noted that this is sometimes superficial but often it is considered an accurate indicator of merit.

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[11]Joseph Parker Witherspoon, Administrative Implementation of Civil Rights (Austin: University of Texas Press, 1968), pp. 5-32.

Articles in law journals and eye witness accounts provide evidence that the audience reaction to Marshall's speaking was almost universally favorable. Applause and cheers were among the overt signs of approval which substantiate the fact that as a speaker Marshall gained and maintained the attention of his audiences. As far as one can determine there were no exceptions. For example, the Federal Bar News of October, 1965, contained the following comment: "The Honorable Thurgood Marshall, Solicitor General of the United States . . . delivered a stimulating interpretation of recent Supreme Court decisions in an address, 'The Constitution and Social Change'."[12] Members of the audience when Marshall spoke in Indianapolis comment that his remarks were eloquent and that they consider his ideas as great as his reputation. Significantly, newspaper accounts of his addresses tended to report more about his ideas than about his delivery. Typical examples of such accounts appeared in the Indianapolis Star and the Chicago Daily News. Michael B. Scanlon of the Indianapolis Star wrote:

> Marshall also warned against the total physical destruction of the ghetto. "Remove the conditions which require certain people to live in it involuntarily," he said.
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> "This society of two worlds must be merged, this widening gulf between affluence and poverty bridged, this separation of one group, one race

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[12] J. Thomas Rowland and Joseph Fontana, "Convention Program Reaches New High," Federal Bar News, October, 1965, p. 339.

> from another repaired and healed once and for all," he said.[13]

Edmund J. Rooney of Chicago Daily News wrote:

> Thurgood Marshall, Solicitor General of the United States, said Thursday that the United States Supreme Court should not end its involvement with social change.
>
> Marshall said he hopes the Supreme Court will not singly try to eliminate these injustices but that other social and political institutions will make it a joint enterprise.[14]

Substantial evidence provided earlier in this study supports the theme that Marshall's popularity as a speaker on college campuses and before conferences and conventions reached its zenith during this period. His popularity generated increasing demand for his services particularly by law schools and legal associations. Finally, according to rhetorical standards, Marshall can be considered an effective speaker.

His speeches were reprinted in their entirety with complimentary comments in law journals, professional magazines, and the Congressional Record. Leading newspapers contained these speeches in part. The audiences were large and responsive. According to his secretary, he received more requests than he could possibly fill.

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[13]Michael B. Scanlon, "Don't Bulldoze Slum; Fix It Up, Conference Told," Indianapolis Star, June 16, 1966.

[14]Edmund J. Rooney, "Negro Asks Court to Stay Involved," Chicago Daily News, September 16, 1965.

In mid-1967 Marshall's nomination as Supreme Court Associate Justice occasioned many comments and appraisals. His professional career as an NAACP lawyer and as an advocate of equal rights and justice for all, victories before the Supreme Court, his knowledge of and reverence for the Constitution, his personal traits of character and temperament were analyzed and reviewed.

Appraisal of Marshall's wisdom in anticipating future trends essentially tests his vision, his capacity to understand the meaning of current happenings, and his foresight in appreciating their probable effect upon the course of history. Thonssen, Baird, and Braden note: "With such a test, we link the concepts of statesmanship and oratory; we measure a man's greatness as a speaker in terms of his competence in gauging the effects of a contemporary action upon the destinies of men."[15] Accordingly, Marshall's abilities have been lauded time and time again. The following excerpt from a letter dated July 14, 1967, endorsing Marshall's nomination summarizes: "Both in private practice and in public office he has demonstrated those qualities which we admire in members of our highest judicial tribunal; i.e., moderation, reasonableness, a judicial temperament, and

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[15]Thonssen, Baird, and Braden, p. 542.

a balanced approach to controversial and complicated national problems."[16]

Many scholars and orators agree that it is a travesty upon the American creed that Negroes have had to fight for their rights at all. Presumably, the meaning of civil rights implies that they are guaranteed to all without regard to race, color, creed, or class. Significantly, many Americans, Negro Americans in particular, feel that achievement of rights through the courts is expensive and slow but few will disagree with the fact that in the courts, particularly the Supreme Court, there has been "a tide moving slowly but inexorably in the direction of the achievement of first-class citizenship by Negroes."[17] In other words, while the processes of the courts are slow, cumbersome and costly, generally the victories won this way have tended to be solid and enduring. It is not surprising that Marshall's victories before the Supreme Court, arguing cases dealing with civil rights, provided the foundation for his position that the Supreme Court should stay involved in the struggle for equal rights and justice. Put another way, the Supreme Court should continue

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[16]U.S., Congress, Senate, Subcommittee on the Judiciary, Nomination of Thurgood Marshall to Associate Justice of the Supreme Court of the United States, Hearing, p. 198.

[17]Donald B. King and Charles W. Quick, Legal Aspects of the Civil Rights Movement (Detroit: Wayne State University Press, 1965), p. 2.

social reform designed to eliminate inequality and injustice. Marshall's belief in the Constitution as a "living document"[18] and in the capabilities of members of the legal profession and other branches of the federal government gave rise to his argument that these groups, in particular, should share the responsibility for securing equality and justice for all. Marshall contends that the Supreme Court should remain active "in the process of social change of requiring that our social living conform to our social ideals."[19] He maintains that the elimination of inequality and massive injustices require that other branches of the federal government, other social and political institutions, and lawyers in particular make solving the related problems a joint enterprise.

Authorities in the field of speech criticism advise the critic to measure an orator's effectiveness by substantial responses associated with possible changes in belief, attitude, or action which come hours, days, or months after the delivery of the speech. For example, Thonssen, Baird, and Braden remark: "But the fundamental test will be: Did these speeches have an effect upon the

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[18] U.S., Congress, Senate, Subcommittee on the Judiciary, Nomination of Thurgood Marshall to Associate Justice of the Supreme Court of the United States, Hearing, p. 49.

[19] U.S., Congressional Record, 90th Cong., 1st Sess. (1967), CXIII, No. 140, 24644.

subsequent disposition of the question? Did they produce the delayed response? Did they create a readiness in the listeners to act in a certain way when the right stimulus came along? (This is a legitimate end of persuasive discourse.)" In this connection, these authorities also comment: "By extension, this criterion or measure tries to assay the long-range effects of oratory upon society. Over a period of years, did the speech or a series of speeches exercise a discernible influence upon the course of events?"[20]

Thurgood Marshall's speech to the Greater Indianapolis Housing Conference June 15, 1966, focused on the need to resolve the problem of inadequate housing and discrimination in housing or unfair housing practices. On the same day, the Indianapolis News reported the following statements from Marshall's conclusion: "The massive and urgent task of correcting the problems must be done and in the doing we will have made a lasting contribution toward fulfilling the American purpose and redeeming the American promise. There is no higher function of citizenship than that," he [Marshall] said.[21]

Of some interest is the fact that earlier in this speech Marshall had remarked that the provisions of the Housing Act of 1949, particularly the one guaranteeing a

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[20]Thonssen, Baird, and Braden, pp. 542-543.

[21]"Marshall Cites Flaming Distrust," Indianapolis News, June 15, 1966.

decent home for every American, had not been realized. Marshall's address contained specific prerequisites to ensure adequate [decent] and fair housing for all. The Indianapolis Star of June 16, 1966, the day after Marshall's address before the Greater Indianapolis Housing Conference, reported that the conferees had drafted fifteen recommendations that would be presented to city and state officials. According to this article, "Paying replacement value for some owner-occupied homes in the path of interstate highways was one [of the recommendations]." The article continues by listing five other recommendations:

1. Add at least five representatives to advisory councils in areas slated for urban renewal to the housing committee of the Greater Indianapolis Progress Committee. The committee provides the "citizens participation" required by the 1949 Housing Act to qualify the community for public housing.

2. Enlarge staffs and budgets of both the Indiana Civil Rights Commission and the Indianapolis Housing Rights Commission to enforce fair housing laws.

3. Amend the Indiana Civil Rights Law to permit licenses of real estate brokers and salesmen to be revoked if they violate fair housing laws.

4. Co-ordinate neighborhood associations by formation of a council to exert maximum political pressure on city and state officials.

5. Organize an Indiana Department of Housing through which the state might build housing

in Indianapolis to repay city taxpayers for loss of taxable land to be used for highways.[22]

Also significant is the fact that in June, 1966, Congressman Andrew Jacobs, Jr. (D-Indiana) who heard Marshall's address introduced a bill in the House of Representatives "to assure homeowners of getting replacement value and not just fair market price for their homes when forced to sell for federally supported public works projects."[23] It should be added that Congress passed the Civil Rights Act of 1968. According to the United States Department of Housing and Urban Development: "Title VIII of the Civil Rights Act of 1968, the Fair Housing Title, declares a national policy to provide for fair housing throughout the United States." The "Fair Housing Law" protects Americans from such acts as refusal to deal, discrimination in the terms or conditions of sale or rental of a dwelling, and discriminatory advertising, where such acts are based on discrimination on account of race, color, religion, or national origin.[24]

Edgar F. Kaiser, Chairman of the President's Committee on Urban Housing, in a letter to the president

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[22]Scanlon, June 16, 1966.

[23]Ibid.

[24]U.S., Department of Housing and Urban Development, Federal Housing Administration, Fair Housing 1968--An Interpretation of Title VIII (Fair Housing) of the Civil Rights Act of 1968 (Washington: Government Printing Office, 1969).

dated December 11, 1968, which accompanied the Committee's report wrote:

> We have learned that no single new development in technology or in social and economic organization will solve at a stroke this pressing problem. We have learned, also, that although the responsibility of the Federal government is great, Federal action alone cannot build the needed housing. Instead, there must be creative new action by many institutions and agencies, by government at the state and local level as well as in Washington, and especially by private enterprise. We have proposed many specific improvements in Federal housing programs which are intended to encourage greater business participation in the field of low income housing. We have also proposed a specific new instrument--the National Housing Partnership--to provide another route for business entry into the production of housing. We are pleased that this Partnership has now become a reality.[25]

Among others the following recommendation was made by this Committee: "A 10-year goal of 26 million more new and rehabilitated housing units, including at least six million for lower-income families. Attainment of this goal should eliminate the blight of substandard housing from the face of the nation's cities and should provide every American family with an affordable, decent home." This report included two specific reasons why the committee strongly believed that the goal is necessary and justified: (1) "Decent housing is essential in helping lower income families help themselves achieve self-fulfillment in a free

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[25]The Report of the President's Committee on Urban Housing: A Decent Home (Washington: Government Printing Office, 1969), p. ii.

and democratic society;" and (2)"Public expenditures for decent housing for the nation's poor, like public expenditures for education and job training, are not so much expenditures as they are essential investments in the future of American society."[26]

The United States Commission on Civil Rights wrote a letter of transmittal dated February, 1978, and addressed to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives. This letter preceded the second in a series of Annual Commission Reports described as follows: "Each report reviews executive, legislative, and judicial actions, and other developments, favorable and unfavorable, that the Commission considers critical to the national goals of eliminating discrimination and enhancing equal opportunity for all Americans in fundamental aspects of our national life." Of particular significance, the report presents the status of housing, political participation, and the need for continued commitment in the area of civil rights.

> In housing, the rising costs of housing and various subtle patterns of discrimination continued to limit fair housing opportunities in 1977. Federal programs continued to fall far short of providing additional housing needed by low- and moderate-income groups and thus contributed to the lack of any measurable progress toward achieving the national goal of decent housing for all Americans.

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[26]The Report of the President's Committee on Urban Housing: A Decent Home (Washington: Government Printing Office, 1969), p. 3.

> In political participation, the administration promised the appointments of significant numbers of minorities and women to important positions in the Federal Government. Although movement toward this goal has been slower than expected, various top-level posts have in fact been filled by representatives of these groups. Voting rights of minorities were also strengthened by several Supreme Court decisions. Full participation in the Nation's political process remains a distant goal, however, and vigilance must still be exercised to ensure voting rights of minorities.
>
> Following firm Presidential commitments, steps were taken in 1977 to reorganize the Federal civil rights enforcement effort. It is anticipated that these efforts will result in more effective enforcement efforts in 1978.
>
> While important beginnings were registered during this past year, it is hoped that 1978 will be marked by a determined commitment, fully shared by executive and legislative branches of government, to follow through on the encouraging first steps noted in this report and to undertake new and greater efforts to eliminate obstacles to the full protection of civil rights and equal opportunity for all.
>
> We urge your consideration of the facts presented in this report and ask for your further leadership to guarantee equal opportunity for all the citizens of this country.[27]

Assuming the audience complies with Marshall's pleas for action, in the distant future it will undoubtedly appear strange to look back upon these days and observe that a segment of this nation's population had to fight so long simply for equal treatment.

Although Thurgood Marshall's exact place among mid-twentieth century orators may be debatable, few will

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[27]U.S. Commission on Civil Rights, The State of Civil Rights: 1977--A Report of the United States Commission on Civil Rights (Washington: Government Printing Office, 1978), pp. i-ii.

argue the fact that Marshall, like other great orators, came forward to meet recurring crises in American society and uttered words which helped to gain support for social reform and to secure constitutional guarantees for millions of Americans. Marshall certainly expressed the aspirations of many Americans to realize first-class American citizenship in dignified, honest speech. Each of Marshall's speeches represents "a venture in the communication of ideas and feelings to a specific audience." In fact, substantial evidence corroborates the effectiveness of Marshall's addresses in terms of bringing out the moral and intellectual character of the speaker, eliciting some sort of immediate response, bearing the stamp of artistic craftsmanship within the limitations set by the speech situation, contributing to the common good, and to some degree exercising influence upon subsequent events since they certainly indicate concern for man and his manifest destiny.[28]

In terms of the extensiveness of his speaking, in the power of his ideas and communication of them, in the success he achieved gaining support for the causes he represented, in the degree to which he used the courtroom and the public platform to assert humanitarian and equalitarian principles to motivate others to share his beliefs and to act accordingly thereby bringing about

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[28]Thonssen, Baird and Braden, p. 545.

social and political reforms; one is convinced that Thurgood Marshall must be included as one of America's mid-twentieth century orators.

For centuries other orators in America have addressed the problems related to the inequality and injustice as Marshall did in the five speeches of this study. Certainly, the problems to which Marshall dedicated his life, his professional career and his personal concern have not at this point in time been settled. Presumably, Marshall's efforts must be evaluated in terms of the effectiveness with which he asserted his sincerest convictions.

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In September 1950, she entered Talladega College, Alabama. Majoring in English and minoring in history, she received the degree of Bachelor of Arts in June 1954.

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Following years of teaching speech and theatre in Texas colleges and universities, she assumed duties as associate professor of speech at Southern University in Baton Rouge, Louisiana, in 1972. Taking a leave of absence from Southern University in 1975, she accepted a graduate assistantship at Louisiana State University in Baton Rouge and pursued graduate studies toward a doctoral degree in public address and rhetoric.

EXAMINATION AND THESIS REPORT

Candidate: Erma Waddy Hines

Major Field: Speech

Title of Thesis: Thurgood Marshall's Speeches on Equality and Justice under the Law 1965-1967

Approved:

Major Professor and Chairman

Dean of the Graduate School

EXAMINING COMMITTEE:

Date of Examination:

April 26, 1979